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# Clark Memorandum: Fall 1996

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# CM

Clark Memorandum  
J. Reuben Clark  
Law School  
Brigham Young  
University  
Fall | 1996

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The Bramble Bush

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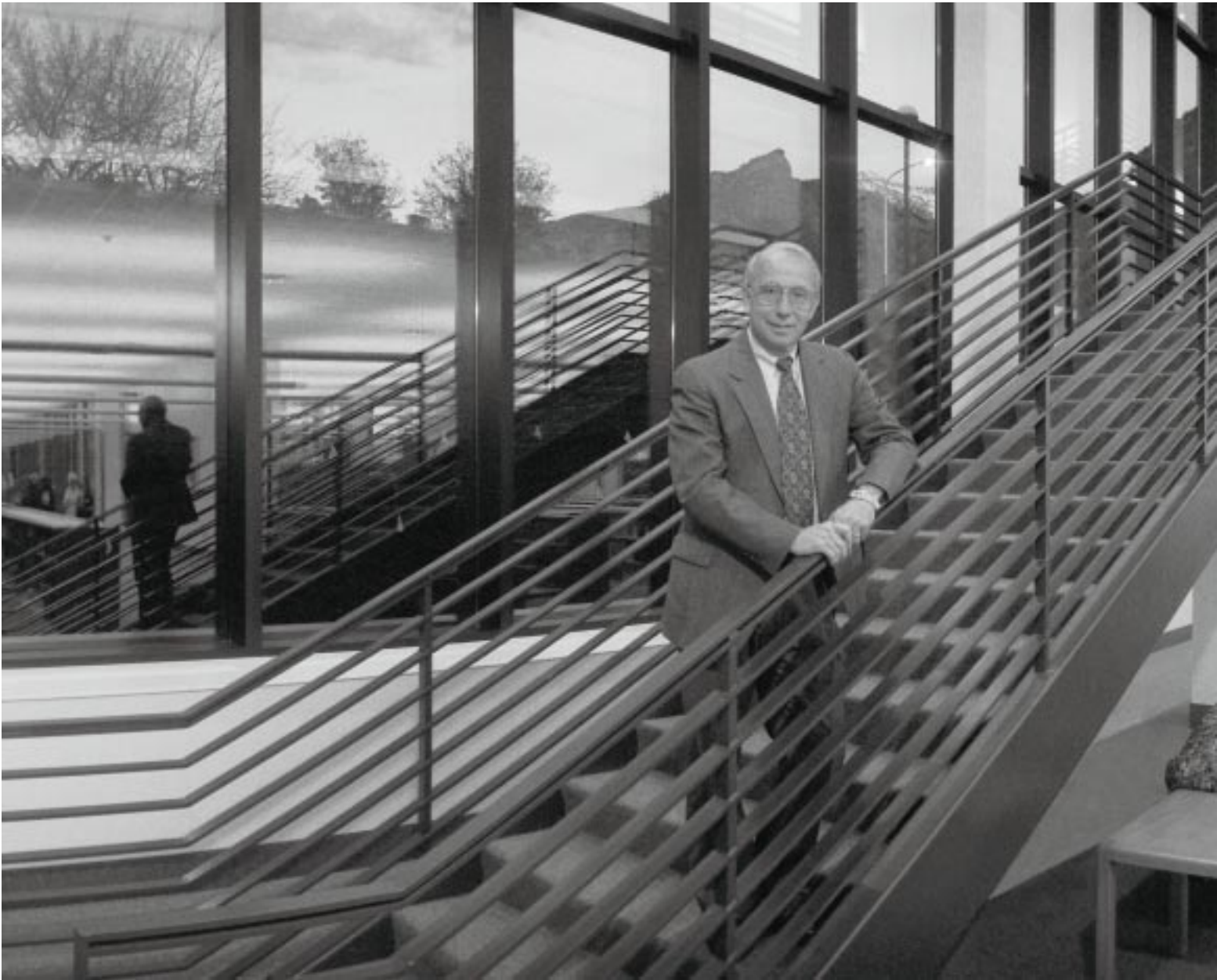
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Reenter the  
Realm of Feelings  
*Elder Dallin H. Oaks*

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## A BRIEF TRIBUTE TO DEAN H. REESE HANSEN

Deans of u.s. law schools generally don't last long—too often, the job of raising money gets to them. Not H. Reese Hansen. Well into his seventh year as dean of the J. Reuben Clark Law School, he has survived the pace of a three-year, \$11 million fund-raising campaign, which would have downed a lesser dean. ☞ In a profession with an average term expectancy of two years, Dean Hansen's service is worthy of note. When asked if he intends to slow down, the dean smiles and indicates that he has just regained the stride that a decade ago he reserved for the St. George Marathon. Besides, he adds, it would be a shame to lose his recently acquired familiarity with every time zone in the continental u.s. The dean, lest he be accused of being in it for the frequent flyer miles, can point to the Law School's uncut video footage of him braving a seat-securing adventure on a local airline. ☞ The completion of the Howard W. Hunter Law Library marks a high point of Dean Hansen's tenure. Although it will not be formally dedicated until March 1997, the library is fully operational—much to the delight of 467 BYU law students. While the students, faculty, and staff are





impressed with the new facility, Dean Hansen knows firsthand how grateful the BYU Law School community should be to the Board of Trustees as well as the members of the J. Reuben Clark Law Society and Law School alumni and friends. As a member of more than two dozen sabbatical accreditation teams for the American Bar Association, Dean Hansen has seen other law schools in significant detail. As a member of the Accreditation Committee of the American Association of Law Schools, he has the unusual opportunity to closely examine the operation and status of nearly half of all law schools in the United States each year. These opportunities have given the dean a deep understanding of the favorable circumstances under which the faculty teaches and the students learn at the BYU Law School. ☞ Though there is gratitude to share with many, before we forget the Herculean effort it has taken to get this project completed, the *Clark Memorandum* wishes to pay a brief tribute to Dean Hansen, without whose efforts the building might not have been constructed at all or—perish the thought—might still be under construction. —*Clark Memorandum*





R E E N T E R   T H E   R E A L M   O F      E   E   L   I   N   G   S

E L D E R   *Dallin H. Oaks*

•

Illustrations by Rob Blackard





This address was  
given at the  
J. Reuben Clark  
Law School  
Convocation,  
April 26, 1996.

FEEL VERY PRIVILEGED TO BE WITH YOU ON THIS OCCA-  
SION. IT SEEMS HARD TO BELIEVE THAT IT HAS  
BEEN 20 YEARS SINCE THE FIRST GRADUATION,  
WHICH OCCURRED JUST A FEW MONTHS AFTER  
THE MIDPOINT OF MY SERVICE AS PRESIDENT OF  
BRIGHAM YOUNG UNIVERSITY. AT THAT TIME,

this Law School was a struggling infant. Now it is a mature and highly respected adult in the congregation of legal education.

I believe you will understand my desire to increase the personal warmth of this occasion by stirring the coals of nostalgia. It was 23 years ago this August when a group of hopeful Church authorities, educators, and students gathered for the ceremony opening this law school. President Marion G. Romney of the First Presidency presided. President Ezra Taft Benson of the Quorum of the Twelve, Commissioner Neal A. Maxwell of the Church Educational System, BYU President Emeritus Ernest L. Wilkinson, Dean Rex E. Lee, about eight initial members of the faculty, and 156 members of the charter class were also present.

For historical purposes, I quote from my remarks on that occasion:

*We are frequently asked why Brigham Young University is establishing a law school at this time. We have all heard reasons suggested, and many of us have contributed a few. Some of these suggestions are speculative, some reasoned, and some have the ring of authority. But the most important fact to be noted on this subject is that the trustees of Brigham Young University, whom we sustain as inspired leaders, have decided that Brigham Young University should have a law school at this time. I have received a confirmation of the divine wisdom of that decision, and I am quite content with that. The special mission of this law school and its graduates will unfold in time. [Addresses at the Ceremony Opening the J. Reuben Clark Law School, BYU, August 27, 1973, pp. 4-5]*

After 20 years, we have fewer doubts about the special mission of the Law School. Nevertheless, we are keenly aware

that this special mission is still unfolding and that each new graduating class adds its own illumination toward understanding and its own momentum toward achieving that mission.

So much for nostalgia. Now to the business at hand.

I have a whole file full of trite expressions tailored to a graduation. You will be glad to know that I left that file untouched in my preparation and will try to leave its contents unaccessed in my recollection. I wish, instead, to speak candidly to these law graduates about one important aspect of their transition from law studies to the professional period that follows.

I enrolled in law school 42 years ago this fall. (Forty-two years! It seems I just can't stay away from nostalgia!) At that time, I had the good fortune to have my introductory law class from Professor Karl N. Llewellyn, then one of America's best known and most highly honored law teachers. He had all of his beginning students read his book, *The Bramble Bush* (New York: Oceana Publications, 1951). Much of this small book was incomprehensible to entering law students, but as our experience deepened, we came to see that most of it was valuable. On the first reading of *The Bramble Bush*, the only thing I thought I understood was this poem that appeared facing the title page.

*There was a man in our town  
and he was wondrous wise:  
he jumped into a bramble bush  
and scratched out both his eyes—  
and when he saw that he was blind,  
with all his might and main  
he jumped into another one  
and scratched them in again.*



For Professor Llewellyn, the study of law was the first bramble bush, a painful experience that would gouge out the normal eyes of the student. But his book offered hope. Those who persisted in their reading found this passage on pages 105–106:

*So, gentlemen, the prospect: the thicket of thorns. The subtleties of the case method to disentangle. . . . Details, unnumbered, shifting, sharp, disordered, unchartable, jagged. And all of this that goes on in class but an excuse to start you on a wilderness of other matters that you need. The thicket presses in, the great hooked spikes rip clothes and hide and eyes. High sun, no path, no light, thirst and the thorns.—I fear there is no cure. No cure for law but more law. No vision save at the cost of plunging deeper. But men do say that if you stand these thousand vicious gaffs, if you fight through to the next bush, the gashing there brings sight.*

By now, your three years of law study have given you what Llewellyn called “the gashing” of that second bramble bush, which has brought you your legal vision. At least that is the conventional wisdom and the expectation of those who preside over the teaching of the law in the law schools and in the law firms and agency apprenticeships for which most of you are now destined.

We all know that graduation is a time of transition from formal education to the further learning and compensated employment for which you have been prepared. But graduation marks another transition, too. It is of this other transition that I wish to speak, because what I have to say you may not hear from those who will tutor you in your further education in the law.

You need another kind of tutoring—we might even say another kind of gouging—to restore some of the vision you lost in the legal introduction Llewellyn called the first bramble bush. You need some special efforts because the loss of this kind of vision was not restored in your legal studies.

In the study of the law, you have become proficient in learning and reasoning from rules and in determining facts. The vision necessary for this kind

of learning and skill is necessary to make you serviceable in your profession. But in the process, you may have been desensitized or at least have become neglectful of another dimension of life—the realm of feelings. You should now reenter that realm. Hence the title of these remarks: “Reenter the Realm of Feelings.”

The law doesn’t do much with feelings. A feeling is rarely actionable or even admissible. Yet, even in the realm of the law, feelings are often more important than facts or rules. Lawyers who fail to get reintroduced to the realm of feelings are not likely to succeed in the practice of law. More important, they are almost certain to fail in the fundamentals of life that are more important than law or anything else.

If you think I have overstated that point, tell me what fact or rule motivated you married graduates in your choice of the companion who is more dear to you than anything else. I judge that in making that choice you proceeded on feelings. If you reflect on the most important decisions you have made in your life, you will probably conclude that most of them, though preceded by a careful study of the facts and the rules, were most immediately motivated by feelings.

Take account of your feelings at this moment. You feel relieved to be graduating. You feel grateful to your parents and to your spouse, and yes, to your teachers and to the Law School. You feel apprehensive but determined about what lies ahead. All of those feelings are under-

standable and appropriate, and all of them should be acted upon.

There will be other feelings. In the months and years ahead, feelings of responsibility should stir you to action. Feelings of inadequacy should press you to careful preparation.

There will be other occasions when you need to be guided by your feelings. If you cultivate the sensitive spiritual receptor that we all have and are intended to use, a feeling of doubt or foreboding will warn you away from ethical or moral pitfalls. If you stray from the prescribed path, a feeling of guilt will move you to repentance. I hope you never neglect your spiritual life to the point that you suffer the result mentioned in the scriptures that describe persons who were “past feeling” the “still small voice” (1 Nephi 17:45).

But there is more. Feelings of love and concern should cause you to give needed attention to those you love. You should always be ready to act upon a generous or even an extrarational impulse when you “feel that it is right” (D&C 9:8). Finally, feelings of reverence and love for the Lord will discipline your thoughts and actions in ways necessary to qualify you for the promised blessings of heaven.

In these and countless other ways, your feelings will guide you if you will allow it.

On this day when a ceremony certifies your mastery of facts and rules, it is appropriate for an older friend to remind some certified masters of facts and rules that they are now emerging from the exclusive sovereignty of those important professional factors and reentering a realm where they must also be accountable to their feelings and the feelings of others.

I hope that you will make a good transition from law school to the world of work. Since this is of even greater importance, I pray that you will also make a good transition from the artificial environment of legal studies into the realm where feelings are controlling in much that is vital. I invoke the blessings of heaven upon you in that essential transition and in all that is to follow.

*Elder Dallin H. Oaks is a member of the Council of the Twelve of The Church of Jesus Christ of Latter-day Saints.*





# Perception vs. Reality



POSTMODERNISM, INTERPRETATION, AND TRUTH IN RELIGION AND LAW

*by Frederick Mark Gedicks*

*Photo Illustrations by Brad Slade*

In the late 1970s, there drifted into legal scholarship some philosophical ideas grouped under the term “postmodernism.” Always on the lookout for something new and trendy, legal scholarship quickly found a place for these ideas, and they now inhabit a well-established (if slightly disreputable) wing of the legal academy. To the delight of some and dismay of many, postmodernism has had significant impact on legal scholarship, particularly in jurisprudence, constitutional theory, and legal interpretation.’

GIVEN POSTMODERNISM'S CONTEMPORARY  
INFLUENCE, IT IS IMPORTANT FOR US AS  
LAWYERS AND LATTER-DAY SAINTS TO  
UNDERSTAND ITS CLAIMS AND THE POTEN-  
TIAL IMPACT OF THOSE CLAIMS ON OUR  
POLITICAL COMMITMENTS AND RELIGIOUS  
BELIEFS. WHETHER ONE BELIEVES (AS I DO)  
THAT THERE IS SOMETHING IMPORTANT WE  
CAN LEARN FROM POSTMODERNISM, OR  
WHETHER ONE IS UNEQUIVOCALLY OPPOSED  
TO IT, WE MUST STILL HAVE A CLEAR IDEA  
OF WHAT WE'RE TALKING ABOUT.

Postmodernism is not well understood within the legal academy, even by some of its proponents. Because postmodernism questions traditional concepts of law and truth, conservatives—especially religious conservatives—tend to dismiss it as nihilistic, relativistic, or just plain crazy, while those on the political left too often embrace postmodernism with naive enthusiasm, believing they have found the intellectual key to life.

Given postmodernism's contemporary influence, it is important for us as lawyers and Latter-day Saints to understand its claims and the potential impact of those claims on our political commitments and religious beliefs. Whether one believes (as I do) that there is something important we can learn from postmodernism, or whether one is unequivocally opposed to it, we must still have a clear idea of what we're talking about. Unfortunately, a full account of the many philosophical approaches that pass under the name of postmodernism is impossible in a short essay. So I will focus on two aspects of postmodernism that I think are particularly important to Latter-day Saint lawyers: (1) epistemology, or how postmodernists approach the problem of how we know what we say we know, and (2) interpretation, or how postmodernists approach the problem of what a text means. I will first outline postmodern epistemology and interpretation and their relation to modernism and follow that with some specific examples of how these aspects of postmodernism have influenced legal scholarship these last 20 years. I will close by considering what Latter-day Saints might learn from postmodernism.

## Modernism

As the "post" in postmodernism suggests, it can be defined by contrast to something called "modernism." Separating intellectual or chronological periods is always somewhat arbitrary, but modernist thought would date roughly from the beginning of the Enlightenment in the mid-17th century until the mid-20th century.

Modernism assumes that the observer is separated from the object of observation. Modernism considers the human subject as if it were in a mental box, "in here," so to speak, while the world proceeds along its course outside the box "out there." (This view is usually attributed to Descartes, although there is some question whether Descartes himself actually conceived of the world this way.) "Knowledge" for the modernist consists in a mental picture or symbol "inside the box" that accurately represents the world "outside the box." For example, analytic philosophy, the most sophisticated variant of modernism, assumes that the world can be accurately represented linguistically—that is, that language is adequate to capture the essential nature of the world "outside the box." Another variant of modernism is the "correspondence theory of truth." This theory defines a true idea as one that corresponds to how the world really is, and additionally maintains that this correspondence between mind and world can be decisively demonstrated through human reason and empirical investigation.<sup>2</sup>

Until recently, the quintessential modernist discipline was natural science. By performing experiments that carefully control the variables, science confirms hypotheses about the world. Hypotheses that cannot be disproved or "falsified" are assumed to represent essential attributes of the world, the "way it really is." In the popular mind, science has long been thought to be "objective"—that is, it is thought to reveal the reality of the world neutrally, without coloring or shading that reality with the subjective attributes or biases of a human investigator.<sup>3</sup>

This view of science grew out of the Enlightenment. The notion that one might uncover reality neutrally and objectively was intensely liberating in contrast to the medieval church's insistence that a proposition had to be consistent with the church's theology to be counted as true, regardless of rational or empirical proofs. For example, in medieval times it was theologically unthinkable that the earth might rotate around the sun, regardless of the strength and number of Galileo's confirmations.<sup>4</sup> Galileo was only one of many



medieval scientists who ran afoul of the church while investigating the world. In the end, the church lost its battles with science, unable to maintain the validity of its geocentric theology in the face of scientific demonstrations that this theology did not reflect reality. By the middle of the 19th century, natural science had replaced theology as the “prestige discourse” of the time—that is, the intellectual discipline that revealed truth and reality.

Installing science as the principal means of discovering reality had implications for the so-called “human sciences”—law, literature, and theology. The human sciences investigate the meaning of human texts like laws, poetry, and scripture. A correct understanding of these texts had long been thought to be a matter of judgment and taste, of an aesthetic sense that could not be replicated by objective method or procedure.<sup>5</sup> By the 19th century, however, Kant’s *Critique of Judgment* was understood to have established the subjectivity of aesthetics. Thereafter, judgment and taste were considered more reflections of the interpreter’s personality and character than independent means of evaluating the text being interpreted; they could tell us much about the interpreter, but little about the text. If judgment and taste—the basis of knowledge in the human sciences—were mostly functions of the interpreter’s personal character without a scientific or other “objective” dimension, then the scholarship of the human sciences could not count as real knowledge. Philosopher Jean Grondin argues that Kant’s placing judgment into a subjective realm denied any cognitive value to the human sciences: “Whatever did not measure up to the standards of the objective and methodical natural sciences was thereafter considered merely ‘subjective’ and ‘aesthetic’—that is, excommunicated from the realm of hard knowledge.”<sup>6</sup>

The epistemological success of the natural sciences combined with Kant’s subjectification of judgment led those in the human sciences to attempt to develop a “science of interpretation”—an “objective” approach to interpretation in the

human sciences that would put them on the same epistemological footing as the natural sciences. If one could only uncover the “laws of interpretation,” it was thought, then these laws would yield objectively valid interpretations, enabling the human sciences to be sources of truth and knowledge equally as valid as the natural sciences.

In sum, modernist epistemology assumed that the way the world “really is” could be accurately and reliably represented. Similarly, modernist interpretation held that the true meaning of a text could be demonstrated with certainty. These are assumptions that postmodernism places in question.

## Postmodernism

It is difficult to pinpoint postmodernism’s origin in the work of a single philosopher. The work of most philosophers in the continental tradition, from Kant and Hegel in the late 18th century through Husserl in the early 20th century, has contributed to postmodernism.<sup>7</sup> There are even postmodern readings of Aristotle and Augustine, among other classical philosophers. A good starting point for postmodern philosophy, however, is the work of Martin Heidegger, particularly *Being and Time*, which was published in 1927 but was not widely read outside Germany until after World War II. Heidegger questioned the validity of the Cartesian box, the subject “inside” who represents the objective world “outside.” Heidegger asserted that there is never a time when subjects are uninvolved in the world, that it is never possible to investigate the world without simultaneously influencing it and being influenced by it. Instead, Heidegger described humans as having been “thrown” into a particular situation in the world—always being in relationships with things before our investigations of those things—placing in question our ability to see the world “as it really is.”<sup>8</sup>

Ironically, some of Heidegger’s arguments in *Being and Time* were consistent with contemporaneous developments in the natural sciences. For example, Werner Heisenberg’s uncertainty princi-

ple states, among other things, that whether a subatomic particle exhibits the character of a particle or a wave depends on whether one is measuring its mass or its momentum. If one measures the location of an electron, it exhibits the characteristics of a particle. If one measures how the electron is moving, however, it exhibits the characteristics of a wave.<sup>9</sup> How can an electron be both particle and wave? Even more perplexing, why should the characteristics displayed by an electron vary according to what the scientist is attempting to measure? Heisenberg himself believed that how the world appears to us depends on what we want to know about it: “Natural science does not simply describe and explain nature; it is part of the interplay between nature and ourselves; it describes nature *as exposed* to our method of questioning.”<sup>10</sup>

Hans-Georg Gadamer, a student of Heidegger’s, extended Heidegger’s general insights to interpretation in the human sciences. In *Truth and Method*, published in German in 1960 and translated into English in 1975, Gadamer made a clean break with the 19th-century search for objective certainty in interpretation by arguing that there is no such thing as an “objective” meaning that resides in a text independent of an act of interpretation. An interpreter always brings his or her concerns and biases to the text being interpreted, and interpretive meaning is produced by the interaction of these concerns and biases with the text. Gadamer argued that it is not possible for an unengaged subject neutrally to extract from a text a pristine objective meaning:

*A person who is trying to understand a text is always projecting. He projects a meaning for the text as a whole as soon as some initial meaning emerges in the text. Again, the initial meaning emerges only because he is reading the text with particular expectations in regard to a certain meaning. Working out this fore-projection, which is constantly revised in terms of what emerges as he penetrates into the meaning, is understanding what is there.”*

## Postmodernism and the Public/Private Distinction

Liberal political theory—which, incidentally, is subscribed to by Republicans as well as Democrats—depends on a division of human life into mutually exclusive public and private spheres.<sup>2</sup> Among other things, liberal theory provides that government can properly regulate public matters but not private ones. In contemporary life, private life is usually protected by individual rights; government regulation is permissible if it does not cross the boundary marked by individual rights into private life.

Conceptually, the boundary between the public and private spheres tracks the Cartesian division of the world into subjects and objects. In private life, individuals have what might be called “subjective freedom”: If they do not harm others, they are free to do whatever they please for any reason (or for no reason) without having to justify their conduct to the government or to other people. In public life, on the other hand, government and individuals are obliged to serve the collective “public interest” rather than the idiosyncratic tastes and preferences of a particular person. Unlike choices in private life, choices in public life must be justified objectively—that is, empirically or rationally.

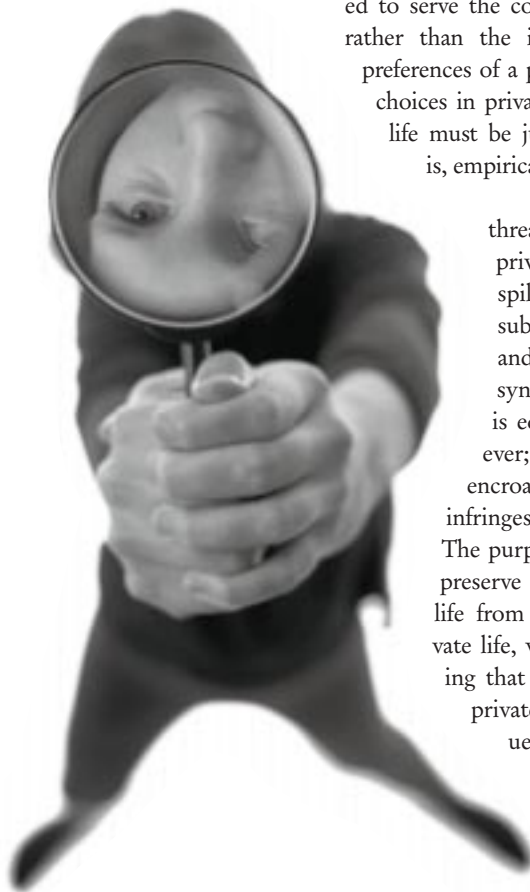
For liberal theory, the threat posed by activities in private life is that they will spill over into public life, subverting its institutions and actors to a set of idiosyncratic values. Public life is equally threatening, however; whenever public life encroaches upon private life, it infringes upon individual liberty. The purpose of government is to preserve the objectivity of public life from the subjectivity of private life, while nonetheless ensuring that there remains sufficient private space for the continued pursuit of subjective values outside the public sphere. The state accomplishes this by remaining ideologi-

cally neutral—that is, by refusing to oppose or endorse values in private life, and acting in public life only on objective facts rather than subjective beliefs. If individual values are merely a function of individual tastes or preferences that cannot be measured or explained, as liberal theory maintains, then no single set of values can be objectively shown to be better than any other set, and government must remain neutral with respect to all sets of values. It follows that the most uncontroversial kinds of government actions in a liberal democracy are those perceived to be based on objective facts, and the most problematic actions those based on subjective values.

A key task of liberal political theory is to police the boundary between public and private life by distinguishing subjects from objects—that is, values from facts and desires from reasons. Beliefs or values that reside in private life are suspect as a basis for government action unless they can be plausibly recharacterized as facts or reasons. Only if a belief is confirmed by widely held experience or scientific investigation, or by reasoning that is consistent with such experience or investigation, does it qualify as knowledge on which government legitimately can act.

This account of liberal political theory helps to explain why religious belief and practice are so controversial when manifest in politics and other areas of public life. Religious belief and practice are forced into private life by the way the public and the private are defined in contemporary American society. Particularly in conservative religions like the Latter-day Saint faith, reason and empiricism are ultimately subordinated to authority, tradition, and faith as ways of knowing. By its nature then, religion cannot satisfy the objective tests that would give it proper public status.

Keeping religion and religious belief confined to private life enables liberal political theory to marginalize religion without having to eliminate it. For example, Marx argued that we can emancipate ourselves politically from religion by “banishing it from the sphere of public law to that of private law.”<sup>3</sup> Explaining the force of this point, Elizabeth Mensch and the late Alan Freeman, two prominent postmodernists in the American legal academy,



observed that by confining religion to private life, rather than abolishing it outright, government reduces religion to “a private whim, an expression of purely subjective individualized values.”<sup>4</sup> As such, religion and religious belief need not and cannot be considered by those who act in public life.

Liberal political theory purports to treat religion and religious belief neutrally—as subjective value preferences restricted to private life like all such preferences, rather than as objective knowledge proper to public life. However, this position can be genuinely neutral only if the boundary drawn between the private world of subjective preference and the public world of objective fact accurately represents the world. As I have explained, postmodernism casts serious doubt on the proposition that things in the world can be objectively categorized as “public” or “private.” The public or private character of any activity depends not only on apparently “objective” attributes of the world but also on the classifier’s subjective perception of these attributes; most activities can be plausibly characterized as both public and private. Postmodernism thus enables criticism of the confinement of religion to private life as not being the natural or inevitable result of the objective reality of the world, but merely a particular experience of the world filtered through the premises of liberal political theory.

## Postmodernism and Originalist Interpretive Methods

Critiques of “originalism”—the view that the Constitution should be interpreted as it was understood when it was drafted and ratified—are by now well known.<sup>5</sup> Most of them center on the impossibility of discovering the framers’ intent—for example, the minutes of the Constitutional Convention and the legislative histories generated by the Congresses that passed amendments are often obscure, unreliable, or nonexistent; the framers themselves were often uncertain or conflicted about what they meant to accomplish with respect to certain constitutional provi-

sions; and so on. Other critiques focus on the self-contradictory nature of originalist claims—for example, the framers themselves may not have intended that the Constitution be construed according to their intentions, and certain constitutional texts like the Fifth, Ninth, and Fourteenth Amendments may reflect the framers’ intention to extend constitutional protection to rights not enumerated in the Constitution or otherwise contemplated by the framers.

Postmodern criticism of originalism is deeper than either of these arguments. Even if comprehensive legislative history exists, so that there is no question what the framers were thinking, and even if this legislative history presents a complete and coherent expression of the framers’ intent *not* to protect unenumerated rights, postmodernism holds that we cannot understand these materials as they were understood by the framers. That is, we cannot ignore the effects of the history that interposes itself between them and us. No matter how hard we try, we will never understand the Constitution as it was understood in a preindustrial, agrarian society that presupposed a common religious morality, yet nevertheless enslaved African Americans, dispossessed Native Americans of their homelands, and imposed civil disabilities on other racial, ethnic, and religious minorities as well as women. We can only understand the Constitution as the people we have become—a post-industrial, technologically advanced, egalitarian society that is religiously and morally fragmented to the extent that government is largely prevented from acting on most moral bases. In short, when we interpret the Constitution, we cannot isolate ourselves and our experiences of contemporary life inside the Cartesian box, any more than we can ignore the various interpretations of the Constitution that have been passed on to us in the last two centuries. There is no question that originalism yields answers to questions about the meaning of the Constitution, but the claim that these answers are “objective”—free of the biases and motivations of contemporary interpreters—is rendered deeply problematic by postmodernism.

ELIZABETH MENSCH AND THE LATE ALAN  
FREEMAN, TWO PROMINENT POSTMOD-  
ERNISTS IN THE AMERICAN LEGAL ACADEMY,  
OBSERVED THAT BY CONFINING RELIGION TO  
PRIVATE LIFE, RATHER THAN ABOLISHING IT  
OUTRIGHT, GOVERNMENT REDUCES RELIGION  
TO “A PRIVATE WHIM, AN EXPRESSION OF  
PURELY SUBJECTIVE INDIVIDUALIZED VALUES.”

IF ONE INSISTS ON AN EXPLANATION OF THE  
 ORIGIN OF HUMAN BEINGS AND THE UNI-  
 VERSE THAT IS COMPOSED ONLY OF TESTABLE  
 HYPOTHESES, THEN SOMETHING LIKE EVO-  
 LUTION IS THE INEVITABLE RESULT.  
 "GODLESS EVOLUTION" IS AN ACCURATE  
 DESCRIPTION, NOT BECAUSE SCIENTISTS  
 ARE CONSPIRATORIAL ATHEISTS, BUT  
 BECAUSE THE SCIENTIFIC REQUIREMENTS OF  
 RATIONALISM AND EMPIRICISM LEAVE  
 LITTLE ROOM FOR GOD TO DO ANYTHING.

This suggests another postmodern insight about legal interpretation: that constitutional language is *always* ambiguous and thus susceptible to more than one plausible interpretation. Critics of postmodernism often deride this claim, and it is admittedly oversold by many postmodernists. A better way of putting the point is that the ambiguity of constitutional language increases in direct proportion to what is at stake in interpretation—the higher the stakes, the more likely the presence of ambiguity, and vice versa. For example, critics of postmodern interpretation often point to Article II, §1, clause 5 of the Constitution, which restricts the Presidency to “natural born Citizen[s]” having “attained to the Age of thirty-five years,” as an example of constitutional language that is not in the least ambiguous. Of course, there is currently no shortage of candidates over 35, and there is no one under age 35 who is trying to run for president; the language appears clear and unambiguous because there is no current need to interpret the language as meaning anything different from what it is currently understood to mean.

Suppose, however, that as the fulfillment of every 1960s hippy’s dream, a virus were to strike the United States killing every person over the age of 30.<sup>6</sup> Now there is something at stake in interpreting this provision, because if the provision truly means what it appears to mean, there is no one eligible to be president. My suggestion here is that this previously unambiguous language would immediately become less clear, because there is now a strong motivation for a different interpretation than that of the so-called “plain meaning,” a motivation that didn’t exist before.

Consider another, less fanciful situation. For almost two centuries, the phrase “natural born Citizen” was generally understood to mean “born in the United States.” In the early 1960s, however, George Romney ran for president. Romney had been born to U.S. citizens residing in the Mormon Colonies in Mexico; such persons are usually held to have dual citizenship in both the country of their parentage and the country of

their birth until they make a choice at adulthood. A few political pundits raised the question whether Romney was constitutionally qualified to be president, since he was born outside the United States. Now is it so clear what this provision means? So long as no one born outside the United States ran for president, there was no ambiguity in this clause because nothing was at stake, but when a citizen born outside the United States sought the presidency, then the stakes were raised and ambiguity immediately appeared. (The consensus, incidentally, was that Romney was qualified; the meaning of the clause was refined to mean “citizen by birth,” as opposed to “citizen by virtue of birth within the geographical confines of the United States.”)<sup>7</sup>

Political conservatives are suspicious of postmodernism because it places in question the rule of law—that is, the belief that liberal democracies are governed by the force of impersonal law and not by the will of a king or other tyrant. Robert Bork, for example, argues that only an interpretive methodology like originalism can preserve the rule of law by excluding the value preferences of the judge from the task of legal interpretation.<sup>8</sup> Postmodernism argues, however, that the interpretation of law is unavoidably connected to the attributes and situation of the interpreter—that is, that it is not possible to uncover an “objective legal meaning,” but only legal meaning that is the result of a complex interaction of textual object and interpreting subject. As postmodernists might predict, originalist judges regularly abandon originalism when it leads to results that contradict their personal views about political theory. Chief Justice Rehnquist, for example, has written a majority opinion upholding an understanding of presidential power in foreign affairs far broader than that envisioned by the framers, based on historical developments occurring long after the founding era.<sup>9</sup> Similarly, Justice Scalia found that the free exercise clause precluded judicial exemptions because of the evils of judicial balancing, without a single reference to the framers’ views on the matter.<sup>10</sup> Postmodernism helps us to see that constitutional and other kinds of legal interpretation are not neutral and objective processes



of discovery, but rather political processes laced with the biases and ideologies of judges on both the political left and the political right.

## Postmodernism and the Gospel

One occasionally finds Latter-day Saints who talk about postmodernism as if it were the embodiment of the gospel. This is silly. Much more commonly (especially at BYU), one finds Latter-day Saints talking about conservative Republicanism or some other political ideology as if it were the embodiment of the gospel. I think this is just as silly. More than silly, both attitudes indicate a fundamental misperception of what the gospel is. The gospel does not depend for its validity on any human ideology nor is it an ideology itself. The gospel stands on its own as the revelation of God to his children; it doesn't need to be propped up by human argument, and there is some danger in doing so.

This doesn't mean that there isn't much to learn from human ideologies; to the contrary, the world has much to teach us. I think this is the meaning of the scriptural counsel that we look for wisdom "out of the best books," and that we "seek learning, even by study and also by faith."<sup>21</sup> It is worthwhile to study human ideologies because of the broadened perspective and insight they might enable us to bring to our understanding of the gospel. Even Marx got a few things right—a broken clock tells the right time twice a day—and these things are worth learning. So when I discuss what postmodernism might teach us about the gospel, I do not mean to suggest that it replace or substitute for the gospel, that we somehow "postmodernize" the gospel, but only that postmodernism can illuminate some aspects of the gospel in ways that modernism doesn't, thereby deepening our understanding of our faith.

For example, postmodernism highlights the extent to which Latter-day Saints, like most conservative believers, have allowed modernist assumptions to dictate their understanding of their religious beliefs.

Take the so-called conflict between creationism and evolution, creationism being the creation of the world and its first human inhabitants by the divine and miraculous intervention of God, whereas evolution is such creation by the random interaction of wholly natural forces. The conflict usually centers on which side "has it right" about how the earth was "really" created, the evolutionists or the creationists. Both sides regularly trade accusations about bad science, usually mixed in with not-so-subtle insinuations of bad faith in interpreting the data. Why is the conflict framed in this way? Why should we care what evolutionists or creationists think?

The answer is that creationists have bought into the assumption that science accurately represents the world "as it really is" (or, at least, "as it really was created"). Evolution, therefore, is perceived by creationists to be an objective explanation of how the world and its inhabitants came to be. Given this assumption, the logical creationist response is to attack the quality of evolutionary science so as to divest it of its credibility as knowledge.

My own view is that evolution is pretty good science, and creationism hardly science at all.<sup>22</sup> But I hasten to add that this does not mean that evolution is an accurate account of the creation—and creationism inaccurate; one has to remember how "science" is defined. Science seeks to uncover the reality of the world by rationally and empirically testing hypotheses. This means that a hypothesis that is neither rationally nor empirically testable—say, "God created Adam and Eve through supernatural forces"—is scientifically useless, because there is no way to falsify it. If one insists on an explanation of the origin of human beings and the universe that is composed only of testable hypotheses, then something like evolution is the inevitable result. "Godless evolution" is an accurate description, not because scientists are conspiratorial atheists, but because the scientific requirements of rationalism and empiricism leave little room for God to do anything. Creationism can't be science, because it depends on a hypothesis—the existence of God and his miraculous intervention in the world—which is neither rationally nor empirically falsifiable. This

doesn't mean that creationism isn't true, only that it isn't scientific—that is, rational and empirical.

Postmodernism helps us to see that creationism and evolution are alternative accounts of the same data. There is no way to prove that the data "really" support one and not the other. Because we live in a post-Enlightenment world in which science has long been the prestige discourse, however, we unthinkingly step into the trap of assuming that evolution is fact, and therefore threatening to creationist beliefs.

Much of the conflict between religion and secular knowledge derives from the habitual association of objectivity with truth. On modernist premises, the truth of something depends upon its being objectively demonstrable. This is what makes scientific method so powerful; it purports to free scientific investigation from the biases of the investigator. From this assumed dependence of truth on objectivity it follows that any proposition whose validity derives from a subjective, nonmethodological judgment cannot count as knowledge, but only belief. Hence many Latter-day Saints desire to bolster the secular credibility of our faith by "proving" the truth through the objectivist conventions of secular knowledge. Ironically, this may lead to loss of faith when such proofs are found to be impossible or, worse, to lead to conclusions that contradict Latter-day Saint beliefs.

Because postmodernism rejects the possibility of objective truth, it is often rejected in turn by Latter-day Saints and other religious conservative believers as nihilistic (that is, claiming that there is no truth) or relativistic (that is, claiming that what is true depends only on one's individual perspective). To deny objectivity, however, is not to deny truth. The world undeniably exists in a certain way no matter how or what we think of it; the most fervent commitment to postmodernism will not prevent someone who jumps off a 20-story building from falling to her death. But to acknowledge that the world has certain attributes that are independent of human thought is not to concede that secular methodologies necessarily give us an accurate or reliable view of these attributes. After all, humans have known for millen-



WHEN I DISCUSS WHAT POSTMODERNISM MIGHT TEACH US ABOUT THE GOSPEL, I DO NOT MEAN TO SUGGEST THAT IT REPLACE OR SUBSTITUTE FOR THE GOSPEL, THAT WE SOMEHOW "POSTMODERNIZE" THE GOSPEL, BUT ONLY THAT POSTMODERNISM CAN ILLUMINATE SOME ASPECTS OF THE GOSPEL IN WAYS THAT MODERNISM DOESN'T, THEREBY DEEPENING OUR UNDERSTANDING OF OUR FAITH.

nia that things fall “down” rather than “up,” but accounts of what this means and why this occurs have been legion.

Latter-day Saints claim that all human beings are the spiritual children of a Heavenly Father, that through the atonement his Son Jesus Christ saved us from death and redeemed us from sin, and that the gospel of Jesus Christ was restored to the earth through the prophetic mission of Joseph Smith and continued by successors also endowed with a prophetic calling. Secular knowledge about these claims is worth pursuing because it can illuminate our understanding of them (and it is undeniably satisfying when secular knowledge points in the same direction as our spiritual beliefs). Ultimately, however, we believe the claims of the gospel—indeed, we *know* their truth—because we have received the testimony of the Holy Ghost that they are true, a testimony whose reality and validity are nonetheless neither rationally nor empirically demonstrable. Were it otherwise, we would not need faith, because the truth of all things could be indisputably laid out before us.

“Not everything in reality,” wrote Protestant theologian Paul Tillich, “can be grasped by the language which is most adequate for the mathematical sciences.”<sup>23</sup> Instead, we must hope for things whose outline we only dimly perceive, which we nonetheless know are real.<sup>24</sup> To the extent that postmodernism reminds us that the truth of the gospel does not depend on the proofs of secular knowledge, and may even contradict them, it is truly something worth knowing.

#### NOTES

1. For a survey of the influences of postmodern philosophy on legal scholarship, see Mark V. Tushnet, *Critical Legal Studies: A Political History*, 100 YALE L.J. 1515 (1991).

2. The metaphor of the mental box is Martin Heidegger's. See METAPHYSICAL FOUNDATIONS OF LOGIC 160–61 (Michael Heim trans. 1984) (1928). For a general description and extended criticism of modernism, see RICHARD RORTY, *PHILOSOPHY AND THE MIRROR OF NATURE* (1979).

The correspondence theory is considerably more sophisticated than may appear from the shorthand description in the text. For defenses of the theory,

see PAUL K. MOSER, *KNOWLEDGE AND EVIDENCE* 13–46 (1989); William P. Alston, *Yes, Virginia, There Is a Real World*, 52 PROC. AM. PHIL. ASS'N 779 (1979).

3. This view is no longer considered tenable by most contemporary philosophers of science. See, e.g., ROBERT P. CREASE, *THE PLAY OF NATURE: EXPERIMENTATION AS PERFORMANCE* (1993); THOMAS KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* (2d ed. 1970).

4. For an account of the deep hold that geocentric cosmology had on the medieval world, see C.S. LEWIS, *THE DISCARDED IMAGE* (1967).

5. See generally HANS-GEORG GADAMER, *TRUTH AND METHOD* 3–42, 94–100 (2d rev. ed., trans. Joel Weinsheimer & Donald G. Marshall 1993) (describing truth and knowledge in the human sciences as having been traditionally thought to depend on culture, communal sense, judgment, and taste). See also David Hoy, *Interpreting the Law: Hermeneutical and Poststructuralist Perspectives*, 58 S. CAL. L. REV. 136, 144 (1985) (“Understanding [written texts] includes some nonpropositional content that is more properly described as an ability than as a rule.”).

6. JEAN GRONDIN, *INTRODUCTION TO PHILOSOPHICAL HERMENEUTICS* 109–10 (Joel Weinsheimer trans. 1995).

7. For an accessible summary of the continental philosophical tradition, see ROBERT C. SOLOMON, *CONTINENTAL PHILOSOPHY SINCE 1750: THE RISE AND FALL OF THE SELF* (1988).

8. See MARTIN HEIDEGGER, *BEING AND TIME* ¶ 13 at 86–90, ¶¶ 31–32 at 184–95 (John Macquarrie & Edward Robinson trans. 1962) (1927).

9. PAUL DAVIES, *GOD AND THE NEW PHYSICS* 102–03 (1983).

10. WERNER HEISENBERG, *PHYSICS AND PHILOSOPHY* 81 (1962) (emphasis in original). See also *id.* at 35 (“[A]sking the right question is frequently more than halfway to the solution of the problem.”). I am indebted to Trinyan Paulsen for this quotation.

11. GADAMER, *supra* note 5, at 267.

For a summary of the complete argument of *Truth and Method*, see GRONDIN, *supra* note 6, ch. VI. For modernist criticisms of *Truth and Method*, see E.D. HIRSCH, JR., *VALIDITY IN INTERPRETATION* 245–64 (1967); Emilio Betti, *Hermeneutics as the general methodology of the Geisteswissenschaften* [Human Sciences] (Joseph Bleicher trans. 1980) (1962) in JOSEPH BLEICHER, *CONTEMPORARY HERMENEUTICS: HERMENEUTICS AS METHOD, PHILOSOPHY AND CRITIQUE* 51, 76–84 (1980).

12. This section is drawn from FREDERICK MARK GEDICKS, *THE RHETORIC OF CHURCH AND STATE: A CRITICAL ANALYSIS OF RELIGION CLAUSE JURISPRUDENCE* 29–32 (1995).

13. KARL MARX, *On the Jewish Question* in 3 KARL MARX & FREDERICK ENGELS, *COLLECTED WORKS* 146, 155 (1975) (emphasis in original).

14. Alan Freeman & Elizabeth Mensch, *The Public/Private Distinction in American Law and Life*, 36 BUFF. L. REV. 237, 241 (1987).

15. See, e.g., JOHN HART ELY, *DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW* 11–41 (1980); Paul Brest, *The Misconceived Quest for the Original Understanding*, 60 B.U.L. REV. 204 (1980). For an originalist rebuttal to these critiques, see Richard S. Kay, *Adherence to the Original Intentions in Constitutional Adjudication: Three Objections and Responses*, 82 NW. U.L. REV. 226 (1988).

16. This hypothetical is from Anthony D'Amato, *Aspects of Deconstruction: the “Easy Case” of the Underaged President*, 84 NW. U.L. REV. 250 (1989).

17. For general discussions of Romney's citizenship and its potential impact on his constitutional eligibility to be president, see *Romney Declares He Is in '68 Race; Predicts Victory*, N.Y. TIMES, NOV. 11, 1967, at 1 col. 1, 62 col. 1; *Romney—Republican Hope for '68?*, U.S. NEWS & WORLD REP., Sept. 5, 1966, at 54, 55, 57.

18. ROBERT BORK, *THE TEMPTING OF AMERICA* (1990).

19. See *Dames & Moore v. Regan*, 453 U.S. 654 (1981) (opinion for the Court by Rehnquist, J.). See also Lawrence B. Solum, *Originalism as Transformative Politics*, 63 TULANE L. REV. 1599, 1624–25 (1989) (arguing that Justice Rehnquist's dissenting opinion in *Nevada v. Hall*, 440 U.S. 410, 432–43 (1979) is methodologically identical to Justice Douglas's notoriously nonoriginalist opinion in *Griswold v. Connecticut*, 381 U.S. 479 (1965)).

20. See *Employment Div. v. Smith*, 494 U.S. 872 (1990).

21. D&C 88:118; accord D&C 90:15; D&C 109:7,14.

22. For a neo-Darwinist review of creationist arguments, see Stephen Jay Gould, *The Confusion over Evolution*, N.Y. REV. (Nov. 19, 1992), at 47. For creationist critiques of neo-Darwinism, see PHILLIP E. JOHNSON, *DARWIN ON TRIAL* (2d ed. 1993); GERALD R. SCHROEDER, *GENESIS AND THE BIG BANG: THE DISCOVERY OF HARMONY BETWEEN SCIENCE AND THE BIBLE* (1990).

23. PAUL TILICH, *THEOLOGY OF CULTURE* 54 (Robert C. Kimball ed. 2d ed. 1978).

24. Compare 1 Cor. 13:12 (“For now we see through a glass, darkly; but then face to face: now I know in part; but then shall I know even as also I am known.”); Heb. 11:1 (“Now faith is the substance of things hoped for, the evidence of things not seen.”).

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IT WAS TWENTY YEARS AGO TODAY  
THE CHARTER CLASS



It seems like yesterday when the charter class graduated from the J. Reuben Clark Law School. But 20 years have slipped by since those students donned their caps and gowns, then put into practice what they'd learned from the prestigious faculty the school had assembled from across the country. In the following profiles, we follow the careers and heartfelt memories of several of these extraordinary graduates of the school's early days. They fondly recall

**LOOKS BACK** the converted elementary school that housed

by Jonathan Brett Kalstrom the Law School its first two years and the close

Portraits, John Snyder · Hands, Brad Slade friendships they developed. They also remi-

nisce about such faculty members as Bruce Hafen, Dale Whitman, and founding dean Rex Lee, whose closeness to students, remarkable recruiting skills, and infectious vision were so crucial in establishing the Law School.

Lew Cramer wanted to be a lawyer from a young age: he liked words, enjoyed trying to resolve disputes, and later completed an English degree at BYU. Now, as vice president of government relations for u.s. West, Inc., in Washington, D.C., he uses those legal skills every day, because much of his work resides in telephone regulations. "Law skills are absolutely critical to what I do today," says Cramer, noting various contracts perched on his desk. He has worked for u.s. West since 1989 in a role he finds enjoyable. "We're bringing telephones to parts of the world that have never seen them," he says.



Lew W. Cramer

u.s. West currently conducts business in 20 overseas countries, installing local telephone networks and serving as local operator. Among his duties, Cramer is involved in negotiations to open up the telecommunications market in such countries as India, Poland, the Czech Republic, and Russia. "I spend a lot of my time working on Russia, which doesn't have a whole lot of phones," he says. u.s. West is the largest Western phone company in Russia, where it is established in 10 differ-

ent regions. One project he devotes much time to is setting up wireless communications in that country.

Before joining u.s. West, Cramer worked in government, starting in 1984, when he was named a White House Fellow, following a highly competitive, nonpolitical merit selection process. In that role, he worked directly for five cabinet officers.

"Following that, I decided I wanted to stay in government," explains Cramer, who then served in various posts in the u.s. Commerce Department from 1986 to 1989, including director general of the u.s. and Foreign Commercial Service and assistant secretary of commerce. As direc-

tor general, Cramer directed a commercial staff of about 1,200 people at u.s. Embassies around the world, helping the United States to improve its export performance. He traveled extensively in a position that enabled him to use his proficiency in German and his legal, organizational, and political skills. Serving as assistant secretary of commerce simultaneously, Cramer had a dual role and would be involved in matters such as negotiations with Japan on telecommunications regulations. Before working in government, Cramer was a partner with the Los

Angeles law firm of Argue, Pearson, Harbison and Myers, working in international, corporate, and tax matters.

"I think we all have wonderful memories of the close friendships and camaraderie we had among the charter class," says Cramer, who recalls that instead of study carrels in the old law school building, tables were divided into four, with tape running down the middle, at which the students studied. "There were some wonderful friendships developed because we didn't have the privacy of a study carrel."



Rex Lee was fun, approachable, full of enthusiasm, and dynamic," Cramer says. "He made it exciting to look forward to being a lawyer—you figured every day was going to be like being with Rex Lee—

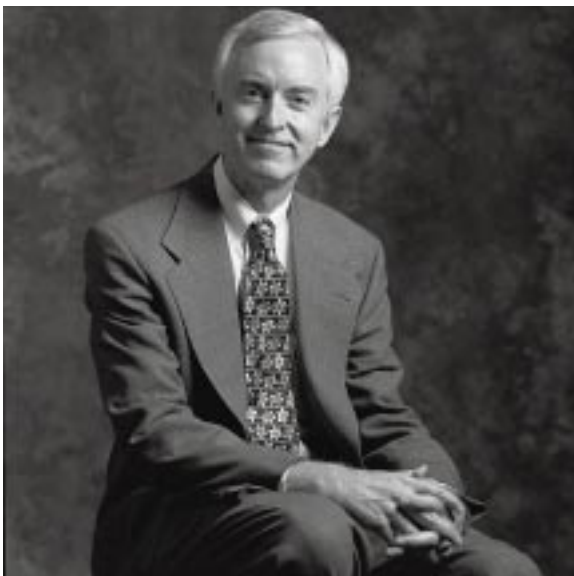
which, of course, it wasn't, because there was only one Rex Lee." Lee was extremely close to the students, acknowledges Cramer, who served as a teaching assistant to Lee and as editor-in-chief of *Brigham Young University Journal of Legal Studies*. For instance, at the end of the first semester,

he remembers, Lee invited the law students over to his house one evening to go through issues in preparation for finals. "It was wonderful."

He also recalls that in his first year, Assistant Dean Bruce Hafen talked about the lawyer's role as a healer of society. That speech made a big impression on Cramer, whose mother was a nurse and brother is a doctor. "The whole goal of trying to heal society," he notes, "was brought home to us, and Bruce often reminded us of that."

R. Bruce Duffield's desire to practice law gelled in high school, in part because he found enjoyment and fulfillment in speech, debate, and English. "It seemed like attorneys were in a position somewhat like the director of a play, where they could bring this cast together, choreograph the movements of the production, and have this little moment on stage directing other actors and presenting themselves in a competitive theatrical setting," he says.

One of Duffield's relatives was an attorney who had a certain persona that impressed him. Duffield's internship with the administrative assistant to u.s. Supreme Court Chief Justice Warren Burger during the summer of 1973, before he entered law school, also had a profound impact on him. "It gave me the vision of the



majesty of the law, and what a great profession [it is] to be in," Duffield says. It also was an exciting time: he had an office in the Supreme Court, watched the high court deliver its opinions, and had occasions to meet with the justices. Sometimes he'd stroll across the street from the Supreme Court to listen to the Watergate hearings.

Today, Duffield is a trial lawyer with the law firm of Lord, Bissell & Brook in Chicago, where he has practiced law since graduation. He represents a wide variety of industrial manufacturers from England, Germany, Japan, the United States, and Sweden, defending them against products liability actions. It is an interesting practice area for him, because each case that comes along involves a new product. "Each [product has] its own little body of learning that it carries with it, and I like that a lot," he says.

The practice area blending manufacturing and products liability evolved for Duffield. After his second year of law school, he worked as a summer associate at Lord, Bissell & Brook, whose program involved rotating second-year law students through different areas of the law. Duffield spent time working in real estate, corporate tax, and insurance law. "But



degree in English that fall semester. But that plan was not to happen until later. He went to the Law School, which had not yet opened its doors, to see if he could get a

library or clerical job to support himself through his last semester of undergraduate work. After discussing his background, it was suggested that he meet with Dean Rex Lee.

He was ushered into Lee's office, and Lee said, "We'll give you a job, if you'll come to school here next year, after you graduate and get your English degree," Duffield recalls. But he declined the offer, saying that he wanted to return to the east coast, where he'd just been working, and attend school there. "Well, Rex was a very charismatic, dynamic person, and he began to describe the school to me, and the faculty that they had pulled together from around the country, and the quality of the students they had amassed for that first class," he says. "Those facts, plus just his dynamic personality, helped me see the vision of this school that Rex had, and it was infectious."

Lee then offered him a deal that he couldn't refuse: "If you could start law school now, right now, and then finish your English degree between your first and second years of law school, would you join this charter class?" Classes at the

## R. Bruce Duffield

then I did the medical malpractice defense rotation and a products liability rotation, and I loved them," he says. When Duffield graduated and returned to the law firm, he again went through a rotation period, but he always gravitated toward litigation and trial work.

Duffield became involved with the J. Reuben Clark Law School after his four-month internship at the U.S. Supreme Court, when he returned to BYU to finish his undergraduate

Law School were going to start in three days, and Duffield was already registered to complete his English degree. After discussing it with various people, he decided to enroll. "It was a completely unexpected, spontaneous move that has changed my whole life in a profound way," Duffield says, "because Rex Lee then became a very dear mentor."

## LINDA GOOLD

"I tell people that my primary function in life is to keep the world safe for the mortgage interest deduction," says Linda Goold, tax counsel and lobbyist for the National Association of Realtors in Washington, D.C., the largest trade association in the world, with about 725,000 members. "Investment in real estate, and the property rights that go with it, are a primary value in American life."

Since graduating with the charter class, Goold has spent 20 years working in tax policy and representing the interests of various clients and organizations in Congress. She first worked for a senior member of the U.S. Senate Finance Committee, Senator Hansen, of Wyoming. "While I worked for him, I worked on the two major tax bills of the '70s," says Goold, who left the Hill in 1979 after Hansen retired, and went to work for the international accounting firm of Arthur Anderson, in Washington, D.C. There, Goold worked with the firm's senior tax partner, and they began developing a legislative practice for the firm's clients all over the world to represent their interests in various tax bills. She joined the National Association of Realtors in 1988.

Goold was raised in Washington, D.C., and did not intend to stay in the West after law school. "I came back to Washington because I knew that if there was any place in America where there would be opportunities for women in the mid-'70s, it would be in Washington. In fact, that's the way it played out," Goold says. "I never would have chosen tax, but the opportunity came my way, and I took it and ran, and it's been



wonderful." In her career, Goold has visited the White House for bill signings and has met numerous dignitaries and powerful figures, including President Clinton.

Part of what Goold finds fascinating about her work is the intrigue of the legislative process and the great demand it places upon her for creative strategy.



"The other thing that is remarkable, having built a career on tax policy, is how many forms the same idea can take year after year and how many versions of the same ideas—some good and some bad—show up.

You never throw away any files if you work in the legislative arena," says Goold, who joined the charter class after a talk with Rex Lee.

During a 1973 summer vacation to Utah, she visited Lee, who'd been Goold's Sunday School teacher during her senior year in high school. "Rex and I had stayed in touch because he was a very important person in my life. He had such a strong, positive influence on me when I was in high school." Goold also wanted Lee to write a recommendation for her, because she'd taken the LSAT and planned on applying to several east-coast law schools, then attend one of

## Linda Goold

them a year from that time. However, at one point Lee asked if she'd like to start law school in three weeks.

"I said, 'Are you saying that I can come to BYU, without applying or making any arrangements?'" she recalls. "He said, 'Yes, that's what I'm telling you.'" Goold then told Lee that she'd call her father to discuss it and that she'd come back the next day. "Rex was someone I trusted completely, and when he gave

me the opportunity to come, I said, 'I'll come,'" Goold says. "It was because of my complete confidence in him as a person with the most exciting intellect I had ever encountered."

**BRUCE REESE** Bruce Reese enjoys his work. "The broadcasting industry is fun: every day there's something new and exhilarating facing you," says Reese, president of Bonneville International Corporation in Salt Lake City, Utah. "It's an opportunity to make a difference and to influence people for the better."

In 1984 Reese became the first inside counsel at Bonneville, owned by The Church of Jesus Christ of Latter-day Saints and among the 10 largest radio broadcasting companies in America. He was general counsel of Bonneville until 1991, when he moved into management and became executive vice president of the company that owns 20 radio stations in the major U.S. markets of America, as well as KSL Television in Salt Lake City. In June 1996, he was named president of Bonneville.

Reese started out his career with the antitrust division at the Justice Department, in Washington, D.C., in a position Rex Lee helped him obtain. In fact, after taking a class Lee taught, Reese decided that he wanted to be an antitrust lawyer. "It seemed to me it was sort of like constitutional law and economics combined," says Reese, who decided in high school he wanted to become a lawyer. He later practiced antitrust law at firms in Washington, D.C., and Denver.

Among Reese's law school memories is the small scale of the old law school building—previously the St. Francis of Assisi Elementary School—which housed the Law School before construction on its new building was completed in 1975. He recalls the long tables where students set up camp and studied. The school, situated a few blocks from campus, had several small classrooms, study rooms, and a lecture hall, which was the old gymnasium. The back of the gymnasium, with its nine-inch-square floor tiles, housed the law library stacks. "It was very intimate—there wasn't much room to hide in the building," Reese reminisces. "We got to know each other very well."



## Bruce Reese





## BRENT ROMNEY

Before the Law School opened, he recalls being part of a group that went to visit Rex Lee about attending the new school. Lee sat with his feet propped up at a green metal desk in his office at the elementary school. "When we walked out, he had convinced all of us to go to BYU. Lee was a remarkable recruiter," Reese recalls. "And he didn't sell us a bill of goods. He told us the truth and still made it sound just as exciting as possible." Reese has never regretted the decision: "It was a great experience."

Brent Romney didn't plan on being a prosecutor. In fact, after taking Professor Dale Whitman's course on real property during his first year of law school, he thought he might enter that field, because Whitman had made the subject sound so interesting. So between his second and third years of law school, Romney arranged interviews for summer clerkships with several civil firms in Orange County. As an afterthought, Romney contacted Oretta Sears, a prominent Orange County deputy district attorney. He had met Sears through her husband, Don Sears, who served as chair of the faculty council at California State University at Fullerton when Romney served as its student body president.

Romney interviewed with Oretta Sears and a month later received a summer job offer from her—as well as from two law firms. "I decided I would rather try out as a summer law clerk at the district attorney's office, because she made it sound so exciting," Romney says. Within two to three weeks at the district attorney's office, he recalls, "It was so clear to me that this fit my strengths as a person and as a lawyer that I decided this is what I wanted to do." At summer's end, he returned to law school and upon graduation immediately went back to the Orange County district attorney's office, where he's been working ever since. In an office employing more than 200 attorneys,

it is one of the largest district attorney offices in the nation, and Romney is one of four assistant district attorneys working under the district attorney and the chief assistant.

Romney started as a misdemeanor deputy and from about 1979 to 1986 was a felony prosecutor, at times prosecuting homicides. From that point, he served as a supervisor in the homicide unit, until being promoted to an assistant district attorney in 1990. On occasion, he still gets into the courtroom. "I'm in the courtroom right now on a big felony trial, but the more you get into management, the less you have a chance to get into court," he says.

In his position, Romney supervises misdemeanor prosecutions as well as felonies filed in the municipal courts. He is also assigned to handle personnel matters relating to attorneys: he heads up hiring, rotations, promotions, and discipline and trains new attorneys so they can eventually move into felony prosecution. "We want them to cut their teeth on misdemeanor jury trials," Romney says.

He enjoys great job satisfaction as a prosecutor, expressing that the profession is more than making a living—it is trying to make society, in a small way, a better place to live. "That may sound corny, but I think that's the common thread that most prosecutors have," he says.

Romney recalls developing close relationships with his law school classmates, many of which friendships have continued. For example, when he graduated, one of his two best law school friends, Kim Purbaugh, joined the prosecutor's office in Riverside, California. "So for the last 20-odd years, he and I have basically risen through the ranks, and we're still close friends," he says. Among Romney's

memories of his law school days is the old law school building. He recalls the gymnasium, where the large-section classes were held and where the original organ pipes for the Tabernacle Choir were stored under the stage.

When considering law schools, Romney attended a meeting conducted by



Brent Romney

Bruce Hafen the winter before BYU opened its law school. "He shared with me that the university and the Church were 100 per cent committed to making the BYU Law School one of the outstanding law schools in the country, and that they were committed to gaining provisional accreditation, but it would take a little bit of faith on the part of the first-year incoming students," Romney says. "That was one of the great challenges of the first-year students: they had to take that little bit of a leap of faith. And [Hafen] was so impressive, so candid, and so open and honest about it, that I thought, 'If people like him are committing themselves, I'm willing to commit myself.'"

*Jonathan Kalstrom is a freelance writer from Minneapolis, Minnesota, who specializes in writing for law school alumni publications.*



BY Judge Norman H. Jackson

*Making a Difference* i In his national best-seller, *Megatrends 2000*, John Naisbitt (a native Utahn) wrote, “The great unifying theme at the conclusion of the 20th century is the triumph of the individual.” He went on to say: • *It is an individual who creates a work of art, embraces a political philosophy, bets a life savings on a new business, inspires a colleague or family member to succeed, emigrates to a new country, has a transcendent spiritual experience. It is an individual who changes him or herself first before attempting to change society. Individuals today can leverage change far more effectively than most institutions.* • *The 1990s are characterized by a new respect for the individual as the foundation of society and the basic unit of change.* [ P. 322 ]







However, Naisbitt points out that this new empowerment of the individual is coupled with the doctrine of individual responsibility, that is, each individual is responsible for everything he or she does. He says: *This is not an "every man for himself" type of individualism, gratifying one's desires for their own sake and to hell with everyone else. It is an ethical philosophy that elevates the individual to the global level; we all are responsible for preserving the environment, preventing nuclear warfare, eliminating poverty. Individualism, however, does recognize that individual energy matters.* [ p. 323 ] I would like to share with you four examples that show that the energy of each lawyer matters and can make a difference in our profession, our society, and our world. I hope that you will expend your personal energy to make a difference.

### Selection of Judges

1

On a recent trip to Las Vegas, it was obvious that a judicial election was in full swing. Posters on many street corners touted the names and displayed the faces of justices of the peace and other judges, including the chief justice of the Nevada Supreme Court. Local newspapers carried election year allegations that the chief justice had misused his court telephone by charging to his state account numerous long distance phone calls to members of his family. A conflict-of-interest claim relating to a case in litigation was also leveled against him.

These political-type aspersions against the presiding judge of our profession in Nevada made me grateful for some lawyers in Utah. Twenty years ago those lawyers initiated legislation to take judicial selection out of the political arena. They pushed the "Missouri Plan" through the Utah legislature. Although the plan allowed a selected and appointed judge to be challenged by an attorney at the next general election, that vestige of politics was soon eliminated in favor of the current judicial selection and retention system. Further, those who have observed the Utah judiciary for more than a generation agree that the quality of judges has improved under this system.

With 31 of one hundred Utah judges standing for retention election this year, our legal system would suffer considerable turbulence under the former political process. Under the present system there will hardly be a ripple. Today, we are reaping the benefits of action initiated by a few lawyers two decades ago. Indeed, they made a difference. Sponsor some legislation!

### Public Members / Bar Committees

We continue to have institutional and personal calls to reform our legal system. Such cries plead for more public involvement in the legal system. A number of years ago a lawyer on the bar's long-range planning committee suggested that one way to improve public confidence in the system would be to have public members serve on bar committees other than the disciplinary screening committee. A three-lawyer subcommittee was appointed to study the matter. As often happens, the lawyer who suggested the idea was one of the three. After a thorough cross-county survey and evaluation, they prevailed upon the bar commission to pursue the idea.

A recent check indicates that the bar has 24 standing committees, 50 percent of which have public members. Of the total 36 public members, two are committee chairs. Over time, the public members who have served will number many times the current 36. I believe I would be safe in concluding that their involvement has been mutually beneficial to the bar and to the public. Indeed, the bar now has many informed nonlawyer public spokespersons.

Yes, one lawyer made a difference. Join a bar committee!

### Interest on Lawyer Trust Accounts

About 10 years ago, a couple of lawyers realized that banks were getting the benefit of earnings of funds in clients' trust accounts. They wondered what would happen if those earnings were utilized to advance the administration of justice and for other worthwhile law-related public programs. They went to work with the I.R.S., the Utah Supreme Court, and the Utah Bankers' Association and creat-

2



3 ed the Utah Interest on Lawyer Trust Accounts (I.O.L.T.A.) program. The Utah Bar Foundation, which had been created in 1969, became the recipient of those funds. In 20 years, it had built a \$40,000 fund, and its annual grants consisted of the \$3,000 to \$4,000 interest earned.

Today, the perpetual endowment fund totals more than \$700,000. In 1996 the Foundation awarded some \$285,600 in grants as follows:

- \$197,700 for legal services for the poor
- \$35,000 for law-related education
- \$46,000 to improve the administration of justice
- \$6,900 for law student scholarships and ethics awards at BYU and the University of Utah

Indeed, a couple of lawyers made a difference, a difference of about one-third of a million dollars a year. Raise some money!

#### American Inns of Court

I have often said that the Inns movement is the single most positive development in our profession during the 20th century. The Inns' watchwords are professionalism, ethics, civility, and advocacy. Though some readers may be aware of the beginning and development of the Inns' movement, let me take a moment to reflect on its history.

Although Chief Justice Burger provided the idea for the Inns, the first movers were lawyers whose roots are found in St. Johns, Arizona; the Uinta Basin; and Sanpete County, Utah. The pilot program was entrusted to one of them, Judge A. Sherman Christensen. The first Inn was organized at BYU on February 2, 1980. The rest, as they say, is history. Today, there are about 20,000 members in 270 Inns in more than 40 states and the District of Columbia.

A recent edition of *The Bench*, the Inns' national newsletter, gives the reasons for organization of the Inns' movement:

*The American legal profession is in great distress today. We are all too well aware of the negative public perception of our profession. The burgeoning lawsuits against lawyers coming out of the financial institutions' debacle—suits against some of America's finest law firms—are only the*

*latest evidence that there is something seriously wrong. The growing number of books, articles, and biting jokes are evidence enough that society has a growing dislike of what it sees in the legal profession. The American Inns of Court were born and have grown (in an attempt) to meet this challenge.*

Sherman L. Cohn, president of the American Inns of Court Foundation, paid tribute to Judge Christensen's individual effort last fall. Cohn wrote:

*Without this extraordinary man, without his vision of what the legal profession should and can be, along with his dedication to our profession as an essential pillar of what makes America great, we know that the American Inns of Court would have been stillborn.*

As the Inns multiplied in number and membership, some members felt it was time to adopt a governing code or set of rules. They were opposed by others who recognized the genius of letting members proceed on principles of simplicity, creativity, and flexibility. A meeting was scheduled at the national convention to debate the issue. A large group assembled. The chair let each person in the circle state his argument, whether pro or con. Then the chair turned to Judge Christensen and asked, "What do you think about this issue? Please share your thoughts with us." Judge Christensen responded with a simple question: "Oh, I don't know, how do you catch a sunbeam?"

His question shed instant and infinite light upon the issue. A vote was taken, and the proposal was defeated. And, like a sunbeam, the Inns were set free to grow and develop, rather than being imprisoned by a set of rigid rules. Join or start an Inn of Court!

Each individual lawyer can make a difference in our profession, our society, and our world. Remember, out of small things great works are accomplished.

*Judge Norman H. Jackson is an original member and still sits on the Utah Court of Appeals. He is also a senior lecturer at the J. Reuben Clark Law School. This article includes remarks delivered at a meeting of American Inn of Court I and expanded in a lecture to the Law School's professional responsibility class on April 11, 1996.*

## CHINA

*An Interview with Doug and Corene Parker*

BY SCOTT W. CAMERON

When most people retire, they move to Sun City and buy a golf cart. Not Doug Parker. Instead, he and his wife, Corene, accepted an invitation to spend a year teaching English to postgraduate medical doctors at Shandong Medical University in Jinan, a city of about four million and the capital of Shandong Province, People's Republic of China. Instead of "late Postum and oranges" on the condominium patio off the ninth green, it was rice and garlic greens cooked on a two-burner hot plate in the bathroom of a 300-square-foot apartment. Rather than tanning by the pool, it was teaching in classrooms where the students and the teachers kept their parkas on throughout the winter to keep warm in unheated buildings with broken windows.

But it is too easy to commence a description of the Parkers in China like this. If you really want to know their experience, you have to listen and suspend judgment, or else you will get only a superficial report. Over the course of a month, I had to express my interest several times before they would speak to me about this priceless year of discovery and service. Corene said it was hard to discuss at first, because it was like two separate worlds: being home was one reality, but being in China was a different reality. Returning home from China was a more difficult cultural adjustment for them than was going.

Near the end of their stay in China, Doug wrote in a letter to his children: "We did not come to China as a means of

filling our conversation with others when we return. Our encounter with new students, friends, and colleagues, whom we have come to love, is one that cannot be fully conveyed. It is enough if we carry our experiences to the grave, unrecounted. Our experience here has been one for experience's sake."

This was not a casual nine-month stay. It was intense, immediate, and personal—not distant, quiet, and reflective. Doug and Corene had decided before they left that they would not compare China to the United States. Doug maintains, "The foreigner cannot avoid seeing everything comparatively, which only conveys to him or her what the country 'is not,' not what the country 'is.' The Chinese do not see their country as a comparative phenomenon. Whatever the water temperature, the toilet facilities, the wattage of the light bulbs, the disposition of the garbage, it is their uncomparated reality—the only reality they know, their existential realm, their

skin and bones." The Parkers wished to see and experience China as the Chinese see and experience their own culture, and they vowed to avoid making adverse comparisons. It was the process of shedding the skin of the foreigner that brought them so much joy.

Each of them taught speaking, listening, reading, and writing to four sections of students. Corene had two postgraduate master's classes, a PhD section, and a section of staff doctors; Doug had three postgraduate classes and one first-year medical school class. Each class had about 48 students and each class period lasted between two and three solid hours. In addition the Parkers sponsored extra, unassigned free-talk sessions with their students, which consisted of walks around the campus or meetings at the central garden. Free talk could be on any subject (except religion and politics, which the government prohibited) and crowds would gather around to hear Doug or Corene speaking English



to their students. Some members of the public would join in the conversations. The Parkers fielded tough questions from “Why are there so many guns in the United States?” to “Why does the United States have such a big problem with homosexuality [and] with racial prejudice?” and “What do you think of the O. J. Simpson verdict?” They were expected to be experts on all subjects.

Early on, Doug and Corene became close friends with their class monitors—one or two students in each class, usually communist party members, assigned by the university to report on the content of class discussions and writing assignments as well as to be of assistance. They were also the ones who planned class parties and dinners. Those monitors quickly became Doug and Corene’s dear friends.

At the beginning of the year, the Parkers told their students, “If we are just your teachers, then we will have failed, we want to be your friends.” This concept was somewhat foreign to the students. To have an American as an English teacher was a great honor, and the Parkers were like celebrities. At first the classes were hard, because the students would freeze if called upon. To respond incorrectly would be a source of considerable embarrassment to these practicing physicians. To get them to speak in class (their participation in free-talk sessions came much easier), Doug and Corene had to discover methods for leading them into the conversation with short answers from which the students gained confidence to move on to more extensive participation. When they gave written assignments, the Parkers tried to have them returned by the next class period. With about 200 pupils each, they found that the logistics of learning names and reading papers for each student was a considerable challenge. So that their classroom teaching would be directed to individuals as friends and not as impersonal members of a class group, Doug and Corene took pictures of each student—all 400—and mounted them on separate four-by-six cards, with accompanying data concerning age, medical specialty, years of practice, hometown, occupation of spouse, and age of child. They constantly sought to relate names

to faces and to call upon students by name. A few students chose English names for use in class. A few of the more interesting names were Door, Fairy, and Glad.

The People’s Republic of China has made a formal commitment to teach English as China’s second language in its middle schools, high schools, colleges, and universities. English is recognized as indispensable to China’s progress, development, and growing world leadership. The doctors in the Parkers’ classes were intense students. To catch up and stay abreast of western medical science, they recognized the need to be able to read the *New England Journal of Medicine* and the many other journals published in English around the world and the need to publish and share in English their own research contributions to medical science. Their traditional Chinese characters (over 20,000 of them) are a written barrier to sharing with the world. Their drive to master English caused the students to bring a high level of enthusiasm, interest, and excitement to class. They reported that of all their postgraduate courses, English was the most difficult.

Living conditions in China were challenging and interesting, but adequate. Doug and Corene had only two hours of hot water a day, from 8:00 p.m. to 10:00 p.m. Often they would keep their breakfast and lunch dishes in the bathtub to be washed when hot water was available. Some nights they were so exhausted from their day’s teaching that they wondered if they could delay going to bed until after the dishes had been done and they had taken a hot bath, particularly during the cold months of the winter. At 10:30 p.m. all water, both hot and cold, would be off until 6:00 a.m. But both Doug and Corene agreed, “These were small inconveniences compared to the joys of associating with such lovely people, who were so anxious for us to have a good experience and to love and to enjoy China, which we most surely did.”

Frequently, ideas for teaching English would come in the middle of the night, and Doug would awake to find Corene

preparing for the next day’s class. They were thrilled when new ideas would come that would stimulate their students to read, to write, and to think. Their assigned readings were eclectic: from Lee’s surrender to Grant at Appomattox to Martin Luther King’s “I Have a Dream” speech, from Freud’s theory of dreams to extracts dealing with Hitler and *Mein Kampf*. From these readings, writing assignments would be drawn on topics such as “An Individual’s Moral Responsibility for Participation in the Immoral Acts of His Government” and “My Views Concerning the Existence of an Afterlife.” The Parkers bonded with their students spiritually, emotionally, and intellectually. Their students weren’t used to expressing emotion, but at the



The Parkers with students at a free-talk session in the park.

end of the year they thanked Doug and Corene with deep feelings for teaching them how to think as well as how to read, write, and speak in English.

The Parkers joined in the life of the community, frequently attending class parties with their students, ballroom dancing with the senior citizens Saturday mornings in the park, and wandering and shopping in the many street markets. They did not see a single gun while in China and never felt any fear for their safety. Without hesitation they joined the crowded buses and used the plentiful taxis to traverse the city. They often rode their bicycles or walked to explore new places. Because of traffic congestion—



**Above:** Having borrowed the costume from a colleague at a different university, Doug Parker delights his class with a special appearance during the holidays.  
**Below:** A surprised reaction to a first glimpse of Saint Nick.

streets were shared by pedestrians, donkey-drawn carts, buses, bicycles, taxis, and cars—bicycle riding was a real adventure. “Everyone rides slowly,” they explained, “and the movement is like the ever-flowing ripples of a river.” When asked if they wanted to own a car someday, the doctors all said they had no desire for cars, as there was no place to park them and no more room on the overcrowded roads. Heart surgeons, neurosurgeons, and obstetricians alike rode bicycles to do their surgery and deliver babies.

In addition to their assigned teaching responsibilities, the Parkers frequently received pro bono requests for their services, which they generously accepted. During the winter term, both of them spoke on a weekly basis to students in the nursing college. Corene undertook editing services on several lengthy papers written in English by Chinese medical professors that were accepted for publication in western journals, subject to corrections of awkward or inaccurate English usage.

Doug’s background as a lawyer and law professor soon became known, and he was invited to lecture to a class of practicing Chinese lawyers who were studying English at a neighboring university. His friendship with the lawyers extended beyond the classroom, and they would visit him in his apartment for additional discussion sessions.

In addition to the treasured friendships, the experience as colleagues was a rich one for the Parkers. In another letter to his children, Doug shared his feelings:

*As intense as our experiences with others have been, even more intense has been our experience with each other, as husband and wife, as sharing colleagues, as best friends, attempting to understand together the inexplicable revelation we are having of the feelings and thinking of Chinese people who have opened their feelings and thoughts to us. I have experienced competent, effective colleagues before, but never have I experienced and observed a colleague who prepares and*

*teaches with the earnestness, intensity, and love as does Corene. I can’t express to you my admiration for her. I have never seen a person so anxious to do well, so anxious to help others. She does not live for compliments, she does not serve for credit, she does not seek recognition, and so it is even more my privilege to say she is a teacher par excellence. We often tried different approaches in our classrooms and sometimes used different materials, but both of us were intent on the same goal: lifting and helping our wonderful, dedicated students. Together we had daily, fervent prayers that we would be equal to their need and desire to learn, and have shared our love for our students and the privilege and inspiration it was to work with them. We know what is meant when reference is made to “tears of joy.”*

One frequently hears that the encounter with the Far East can be a significant, even traumatic, event for a westerner. Doug and Corene had this experience. Doug described the encounter well:

*Everything we have known and in which we have had faith has been examined from a new vantage point. We have looked at our life’s beliefs from a new hilltop, surrounded by new friends who possess and share none of the assumptions that serve as the starting premises and starting foundations for proof and evidence for matters for which we have taken proof and evidence for granted, as self-evident. Our hopes, expectations, and convictions stand more deeply held by us based on a faith that we see and understand as faith, held, I believe, as God intended when he sent us to earth and wiped our memories clean.*

It is difficult to return from a life of such intense single focus to the fragmented life of the materially overindulged western city and 20th-century American convenience. However, the Parkers have missed their children and grandchildren, and their return has been as sweet as their experience. It takes time to process such an experience, but Doug and Corene can speak of China with an evangelical fervor that would be enough to convince some of us to scrap the golf cart and head straight to that 300-square-foot apartment in Shandong.



## MILD-MANNERED

### *C. Douglas Floyd*

terms, made partner at a prestigious San Francisco firm after only four years, is a member of the American Law Institute, and has won the Professor of the Year Award at the BYU Law School five times, among other achievements and honors. Yet he still seems partial to a small plaque standing on his desk. The memento features a photograph of seven of his students and the words: “Presented to C. Douglas Floyd in Appreciation for Five Great Semesters. The Perverse Minority.” It was Floyd who christened the group “perverse” for enduring so many of his classes. However, the seven—William Calhoun,

David Cherrington, Christine Clark, Deborah Dunn, Gregori Pesci, Paul Werner, and Fred Williams—insist they would have gladly endured even more. Says Floyd’s close friend, colleague, and jogging partner Doug Parker, “They took every class he taught. If he had taught the law of beehives, they would have taken it.” Parker emphasizes that the seven were “top-notch students.”

In the estimation of both students and colleagues, Floyd is a top-notch teacher who perennially tackles non-user-friendly courses like civil procedure, federal courts, and antitrust. Of civil procedure Parker says, “Unlike a tort, no one has ever experienced a rule of procedure. Students have no frame of reference to relate to. It deals with the behavior of an attorney in conducting a trial.” Yet Floyd succeeds in “making theory and doctrine

Douglas Floyd served as articles editor for the *Stanford Law Review*, received the Order of the Coif, graduated second in his Stanford Law School class, clerked for Supreme Court Chief Justice Warren E. Burger for two

a reality rather than just rules and abstractions. Making that connection,” Parker concludes, “takes an excellent teacher.” This ability to discuss abstractions in an “applied sense” still stands out in his students’ minds. Says one of the “perverse,” Fred Williams, “I’ll be writing a brief or a motion and suddenly realize I’m applying Floydian analysis.” Those days, which occur frequently, “are the best I have in legal practice.” Debbie Dunn, another of the seven, agrees: “Even though I don’t work in any of the areas he taught, analytical skills I learned from him carry over into any substantive area of law.”

But the first semester with Floyd in civil procedure did not bode well for

Williams, who says: “His use of Socratic questioning was intense. I thought, ‘This guy’s going to be impossible. I won’t survive a semester.’” Paul Werner’s sister, who had taken Floyd’s civil procedure class years before, warned Paul, “For the first three weeks you think it is the worst class you’ve ever taken, but by the end of the semester you will consider Floyd one of the greatest men and best professors you’ve ever had.” Pesci hastens to explain, “He wasn’t mean, and he never tried to make students feel badly. He knew his subject so well and was so bright that you were in awe.” Concurs Paul, “It was the fear you have when you go into court before a great judge.”

All agree with David Cherrington, another of the seven, when he says, “I spent as much time studying for civil procedure as for all my other classes that year combined.” On the other hand, he adds, “I learned as much in that class as in all my other classes combined.” Says Werner, “Professor Floyd’s commitment to law and teaching was contagious.”

Surprisingly, considering his teaching skills and broad knowledge, Floyd’s teaching career is what he terms “something of an accident.” He originally intended to be a mathematician. Undoubtedly the fact that his first job in young manhood was law-related influenced his eventual change

*by L o v i s a L y m a n*

of direction. His father was an abstractor of land titles in Kansas. In the days before computerized searches, verifying a title to ensure ownership and the lack of any liens was a tedious process. Abstractors spent hours in courthouses examining instruments and tracing the entire chain of title, then summarizing or abstracting the data. An attorney examined the completed search. In Kansas the searches generally

bered, because in his hometown, Ness City, Kansas (near Dodge City), the local draft board knew everyone personally. He decided to volunteer for the Navy Judge Advocate General's Corps. Competition was keen; many, like Doug, hoped to use their legal talents while in the military. Ultimately, he was assured that upon completion of the bar he would be welcomed by the Corps. While he prepared

cross-country to Newport, Rhode Island, for officers' training. "I still have frostbite bumps on my ears," confides Floyd of the coldest winter he had ever experienced. In Rochester, New York, the pipes broke in the couple's hotel, and ice crystals formed in their car's oil. "They were thawing cars with blowtorches," he recalls.

Upon completing his training, he was assigned to the JAG office in Washington, D.C. That office supervised the Navy military criminal system, including the Marine Corps, and was responsible for formulating policy, appellate review of criminal cases from Vietnam and elsewhere, and unusual naval offenses, such as hazarding a ship. Besides high profile cases, the office dealt with many issues related to the scope of military authority and the right of free speech as military personnel protested the war.

After three years in the JAG, Doug received a clerkship with Chief Justice Warren Burger. He served during two terms, a memorable experience and a high point in his career. Notable cases at that time included the *Pentagon Papers* case and *Wisconsin v. Yoder*, dealing with religious free exercise.

In 1972, after four and a half years in D.C., the Floyds returned to the Bay Area, where Doug rejoined Pillsbury, Madison & Sutro. "The firm was an excellent place to practice law," he observes, "with a full-scale litigation and business practice." Drawing on his naval and clerkship experiences, Doug specialized in appellate litigation, arguing numerous cases in federal and state appellate courts. Antitrust was another major area of his expertise.

The Floyds' two children were born after they returned to California—Ches in 1975 and Emily in 1977. Ches is now a senior majoring in English and art at the University of Virginia, and Emily is a sophomore studying biology and performing arts at Smith College.

In 1980 Doug discussed the possibility of teaching for a year with Francis Kirkham, a member of the board of visitors in the early days of the BYU Law School and senior partner at Floyd's firm. Kirkham was a man Doug respected highly and over the years had become a close friend and mentor. A Utah boy, Kirkham



led back to a patent land grant. During high school, college, and his first year of law school, Douglas worked summers for his father and ultimately became certified as an abstractor himself. Fortunately, before graduating from MIT with a mathematics major, he decided that the world of theoretical mathematics wasn't for him. As he explains, "A lot of the math out there was too abstract for me." Instead, he opted for Stanford Law School.

When he graduated in 1967, the Vietnam War was well under way. He knew his days as a civilian were num-

bered, because in his hometown, Ness City, Kansas (near Dodge City), the local draft board knew everyone personally. He decided to volunteer for the Navy Judge Advocate General's Corps. Competition was keen; many, like Doug, hoped to use their legal talents while in the military. Ultimately, he was assured that upon completion of the bar he would be welcomed by the Corps. While he prepared

for the exam, he worked for Pillsbury, Madison & Sutro, a large San Francisco firm. Another important event occurred that year: he married his wife, Barbara Beach. They had met during his final year of law school while she was completing a master's in special education at San Francisco State, leading to a career in teaching the visually disabled. Barbara's family was from Berkeley.

In December of 1967 the Floyds loaded their old Pontiac (inside and on top) with all their worldly possessions and headed

had distinguished himself in many ways, including clerkships at the Supreme Court under Justices Sutherland and Hughes. Kirkham helped to arrange a one-year appointment. "Barbara and I enjoyed it so much we stayed," says Floyd of that experience. He concludes that it was his relationships with students and faculty that made the year so congenial.

Some law students never get past the demanding Floyd of their first year. Others, who don't have him for civil procedure, may simply discount him as the quiet man he seems to be. "He's an undervalued asset," attests Williams. "He's a lot like Clark Kent until you get to know

would often say, "Which sentence catches the flavor of this point of law?"

When Pesci and Werner were second years, they recall that Professor Floyd offered a dinner at the Public Interest Auction. Dinners with other professors went for \$20 and \$30, but bidding went crazy for the meal with Floyd. Several of the "Perverse Minority" vied for the opportunity, but it finally went to another student for \$350. In class the next day, Paul told Floyd, "We tried to get your billable hour, but that was as high as anyone would go." Floyd pondered what he could possibly do to deserve that much money. In reality Floyd's good word is worth a

Such expressions of caring and reassurance are typical of Floyd. "It was a great privilege to have him say, 'I want you in my class,'" says Cherrington.

Between 1980 and 1985 Doug taught full-time. Then from 1985 to 1991 he taught an occasional course while practicing law and living in Berkeley. In 1991 he returned to full-time teaching, commuting to Utah to allow his children to finish high school in California, where they were offered "a broader exposure to different ways of looking at things."

Glad to be back to teaching full-time, Floyd views "teaching as more satisfying than practice in a number of ways,"

"For the first three weeks you think it is the worst class you've ever taken, but by the end of the semester you will consider Floyd one of the greatest men and best professors you've ever had."

him. Then you see him as one of the finest professionals and finest professors you've ever had." Parker agrees: "He's not a flamboyant person. He's always soft-spoken, but when he does speak, he doesn't dissipate a lot of conversational energy on unimportant thought."

It is in their second- and third-year courses that students get to know the real Douglas Floyd. Says Williams: "He taught the lessons we needed to learn as 'first years.' During his second- and third-year classes, he treated us as equals as we informally discussed the appointed topics." He hastens to add that "the material is still rigorous, but Professor Floyd is much more approachable." Both Pesci and Werner comment on Floyd's good humor. Dunn describes Floyd as "intellectually entertaining and personable. He isn't there to show the world how much he knows and how little we know." Cherrington corroborates: "Some people that bright make you feel little around them. Mr. Floyd always makes you feel better about yourself and that you have worth." He goes on: "Each class was a delightful exchange if you were prepared. He has such a mastery of the areas he teaches that he knows each case down to individual sentences. He

great deal in the profession. He has helped many students find jobs and clerkships through his contacts and colleagues. Never self-aggrandizing and the last to point out his accomplishments, Floyd is nevertheless widely known and respected.

Floyd is particularly interested that his most promising students have the opportunity to know what he knows, as he told one student: "You're going to be working for the next 40 or 50 years of your life. This is your last opportunity to roam in the fields of the law." Greg Pesci tells how he signed up for Floyd's federal courts course but got cold feet. Everyone in the class was on law review or in the top 10 percent of the class, and Greg wasn't sure he could compete. He didn't go the first day of class and fully intended to drop the course, until he ran into Floyd in the hall and was invited into his office. Greg excused his plans with, "I'm not one of the anointed." He remembers Floyd's reassurance, "You'll do just fine." His words gave Pesci the confidence he needed to take not only that class but three more. Says Paul Werner, who remembers the incident, "Mr. Floyd treated all his students the same. If he knew who was in the top 10 percent, he didn't show it."

though practice and teaching have been mutually beneficial over the years. "In teaching you can focus on your self-directed interests rather than on the needs of clients. You can take a neutral, dispassionate approach," he says. Floyd is active in publishing law review articles, and this year his new treatise, *Private Antitrust Actions*, was published by Little Brown.

Two years ago, the Floyds moved back to Utah. The couple still maintain their home in Berkeley, where they live in the summer to keep up with family and enjoy the advantages of metropolitan life. Meanwhile, their Utah home at Sundance is ideal for many of their family interests, including hiking, skiing, and snowshoeing. Though Doug doesn't accompany them ("I prefer a softer bed") his children bring friends for an annual Uinta backpacking trip. He and Barbara prefer day hikes.

No one could be more pleased with his decision to make Utah and the BYU Law School his permanent home than the "Perverse Minority." Cherrington sums up for the rest, "No one is a better friend to the students than Professor Floyd. He is demanding and at the same time rewarding: a tremendous role model of a scholar and an academic."

## OZ AGAIN?

### Marguerite Driessen

unlike Dorothy, Marguerite, the daughter of an army officer, also *began* her life in an alien place—Wurzburg, Bavaria, in West Germany. “I was born in a country that no longer exists,” she quips. At 11 months she experienced her first move. For the next 15 years, she lived in only two houses for more than a year as her father, a colonel in army intelligence, followed orders. “Everyone should have to move every year,” she insists. “I didn’t notice it at the time, but when I was in high school and when I taught high school I witnessed some definite advantages to my frequent adjustments.” Marguerite feels she was

more mature socially than students who had lived their whole lives in one or two areas. Peer pressure—the kind that says, “Do this, and I’ll be your friend forever”—had no impact. “Since I knew I was only going to be there a year or so, I wasn’t easy to coerce with that strategy.”

She and her four siblings learned to be adaptable. When she returned to Germany to live from ages 10 to 13, she adjusted very well to the different country and language. It was a little harder when they were later transferred to the southern United States, which “seemed more foreign than Germany.”

Over the years, she learned to be selective of her friends. “You don’t want to waste time on poor friendships.” She forged lasting friendships because she knew from experience what to look for.

But though she learned how to be attached to people, she had to learn not to be attached to things. “I had a weight allowance and knew I would soon have to give away anything superfluous to stay within it.”

She admits there was a downside to moving, however: “I never know where to say I’m from. I feel like I’m a citizen of anywhere and everywhere.”

When it came time for college, the world had literally been her campus. Without knowing that motto graces BYU’s entrance, she started to investigate the school. It wasn’t the obvious choice, since she wasn’t LDS at the time, and her home in Dale City, Virginia, was far away. Nevertheless, BYU appealed to 16-year-old

Remember how Dorothy in the *Wizard of Oz* gets whisked away from her simple life in Kansas by a tornado and plopped down in a strange place? That, until recently, was Marguerite Cephas Driessen’s life story. But

Marguerite and one of her girlfriends. They had both been labeled “goody goodies” in every school they had attended, and knowing the reputation of BYU, they concluded they would fit in better and less conspicuously there than at any other school. They were a bit put off by the part of the application that required an interview with a bishop or an ecclesiastical leader. Neither had a clergyman she felt particularly attached to, but Marguerite remembered that a boy in her Spanish class had mentioned his father was a Mormon bishop. They located that ward’s executive secretary

She also dreams of starting the annual J. Reuben Clark Law School musical.

and made appointments. After their interviews, the bishop suggested they might try attending a meeting. They would have done so long before had the meeting times been posted, one of Marguerite’s pet peeves: “Lots of passers-by would feel more welcome and less intimidated if the Church would do that.” Provided with the needed information, the girls gladly went. A family in the ward invited them to dinner after the meetings and did the same the next week—this time the missionaries were invited as well. Before she and her friend left for Provo the following year, they were both baptized. “My folks were happy I was going to a Mormon school,” she says. So pleased, in fact, that later they sent her younger sister to BYU as well.

To her surprise, Marguerite managed to graduate in eight semesters. (She jokes, “I was still single, but they didn’t give my tuition back.”) Her plan to go to law school had influenced her decision as a freshman to change her major from math to political science. “I knew with that major I’d have to finish law school or starve.” Though law school was already in her plans, she had been so occupied with graduating that she hadn’t had time to take the LSAT and send out applications. She taught high school the next year while she took care of those tasks.

She freely admits she was on the dweeb end of the scale at Stanford, serving as an associate managing editor of the *Stanford Law Review* and doing moot court her first year. On the low end of her dweeb continuum was a gospel choir she cofounded with five other students. (The choir later expanded to eight.) It started with two girls singing in the vestibule; a guy joined them, and so on. The group performed at the first-year talent show. They enjoyed practicing so much that they continued to meet, and the law school continued to find occasions for them to perform. Their final performance was at graduation. They chose nonsectarian hymns “low on the Jesus meter,” since one of the members was Jewish. Marguerite sang soprano. The

choir kept her sane while she worked hard at moot court and law review.

Another sanity preserver was the musical produced at Stanford almost every spring. Using any familiar tunes, students substituted lyrics relating to the law school experience. Most of Stanford’s 450 students, plus many law school personnel, got involved in directing, acting, dancing, playing in the band, making scenery and costumes, and applauding the performance. Because they were in the “cool down stage,” with jobs ready and waiting for them, the third-year class always organized the annual show, but lower classmen were welcome to participate, and Marguerite did. When she was a third-year herself, she not only produced the show but was the star. Fittingly, it was a take-off on the *Wizard of Oz*.



That year she had to make an extremely hard decision: where to work. She chose Beveridge & Diamond, a D.C. environmental law firm. When she had been there two years, the United States Sentencing Commission contacted her. They were particularly interested in Marguerite because they were revamping environmental guidelines. She welcomed the chance to move on to a job where she could be influencing policy rather than just responding to it. Balancing the needs

federal sentencing guidelines, instructing courts on the sentencing ranges that apply for violations of federal criminal laws. Marguerite felt that helping to develop criminal justice policy on sentencing would have more meaning in the universe than divvying percentages points of superfund liability. Plus, the hours were shorter. She was glad to make the move.

In D.C. she was active in the single adult ward. For her, single did not equate with miserable, though some of the other

unsuitable suitors, "If you were the last man on earth, I might consider having your children, but I'm not that far gone." Even so, she was invariably surprised when LDS men told her they were intimidated by her and afraid to ask her out.

It was on an outing in 1993 that she first met James (Jamie) Driessen. Jamie, who two years earlier had joined the Church after calling an 800 number to get a Book of Mormon, was a single custodial parent. That summer while his daughter, Amanda, was visiting grandparents in Wisconsin, Jamie decided to attend Marguerite's singles' ward. At first he didn't seriously consider Marguerite as a potential spouse, but whenever he heard her teach or speak, he thought, "I'd like to date someone like her." Finally he asked himself, "Why not her?" Marguerite had reservations as well. After all, Jamie had only been an enlisted man in the army. Was he worthy of the colonel's daughter? And he had not yet completed his engineering degree. He made a commitment to do so, however, and with her father's blessing, they were married in January 1994, and she moved again—to his home in Maryland, 55 miles from D.C. and a four-hour round-trip commute to work.

Michael Goldsmith, a current member of the BYU Law School faculty, who was appointed to the Sentencing Commission in 1994, knew that the Law School was searching for new faculty and asked Marguerite if she had considered teaching law. At that point in her life, the summer of 1995, such a change was particularly appealing because the Driessen's new baby, Samuel James, had joined the family in January of that year. She contacted BYU Law School, and the rest is history.

Marguerite can now walk to work in less than 10 minutes. She rejoices in the fact that Utah has "no grand scheme of problems" and is a place where she can confidently raise her step-daughter Amanda and son Sam. With that in mind, Jamie is designing their home, so at least one more move looms in the future.

Marguerite teaches criminal law, evidence, and a sentencing seminar. She also dreams of starting the annual J. Reuben Clark Law School musical. Dorothy to the last.



of the environment against the needs of a developing society, Marguerite found herself working primarily in the area of civil litigation in which various responsible parties were fighting over their relative levels of culpability. This basically translated into a battle over money. Though she realized that this type of battle may be very important to some, she could also see that it would not be a personally fulfilling career choice for herself. The Sentencing Commission drafts the

women in the ward felt that way. She saw women who were simply waiting to get married, eschewing further schooling, taking low-paying jobs so they wouldn't be better employed or educated than their potential spouses, and then growing bitter as their lives proceeded to go nowhere. Marguerite made a conscious decision not to let that happen to her. She never felt, as some did, "When all else fails, lower your standards." Even as she neared 30, she could still say under her breath about particularly

JUDICIAL CLERKSHIPS:  
THE NEXT GENERATION

By Vicki Heubner



ILLUSTRATIONS BY

ROBERT NEUBECKER

When I was younger, I looked forward to my family's weekly ritual of watching *Star Trek*.<sup>1</sup> The characters were so exciting and the plots so intriguing that I was disappointed when this series ended. I later learned that *Star Trek: The Next Generation* was being produced and would be aired. I was sure this new series would never equal the original *Star Trek*. Who could be as exciting as Captain James T. Kirk or add as much color to a cast of characters as

Scotty? Moreover, I was sure that *Star Trek: The Next Generation* was simply

going to be a cheap reproduction of the original, perhaps repeating the same plots without any original thought and, therefore, spoiling my memories of the *Star Trek* series. However, after watching a few episodes of *Star Trek: The Next Generation*, I noted that the new series was equally intriguing. I quickly decided that despite the different characters and plots, both shows were very entertaining in their own way.



Similarly, I often find myself becoming

captivated as I hear reminiscences about the “great ones,” previous Law School graduates or J. Reuben Clark Law Society members who worked as judicial law clerks and have now established prominent and satisfying legal careers. I am always struck by the brilliance and intelligence of these previous law clerks. I am also impressed by their tenacity and ability to showcase the Law School as an outstanding academic institution and develop its national reputation. Because of their accomplishments, one must wonder whether the current or “next generation” of graduates will be able to continue this tradition of excellence.



Like *Star Trek: The Next Generation*, there is a new cast of characters preparing in the wings to enter the stage. All new graduates offer their gifts and talents to the legal profession in their own unique manner. After observing and associating with the Law School’s current students for one year, I can affirmatively state that the “next generation” measures up to past graduates and will continue to establish BYU’s solid reputation among the judiciary through their performances.



Anyone who becomes acquainted with these students recognizes their potential and ability to contribute to the legal community. Let’s take a “sneak peak” at these new characters as they prepare to enter the world stage.

## ELIZABETH CLARK

After graduating in April 1997, Elizabeth Clark will move to California, where she will clerk for Judge J. Clifford Wallace of the United States Court of Appeals, Ninth Circuit. Elizabeth moved from the Washington, D.C., area to attend BYU for her undergraduate and legal studies. She has particularly enjoyed the manner in which BYU combines spiritual and secular training.

As an undergraduate, Elizabeth double majored in Russian and comparative literature. Her language and writing skills have been beneficial during law school. Because of her excellent writing, organizational, and leadership skills, she was elected editor-in-chief of the *BYU Law Review*.



Additionally, Elizabeth used her language skills during her first summer clerkship when she worked in the Czech Republic and again during the Law School’s International

Church and State Symposium. This past summer, she worked at Holme, Roberts & Owen, where she was able to assist with international law issues.

Elizabeth decided to apply for her clerkship after speaking with Professor James Rasband, who had previously clerked for Judge Wallace, and with other faculty members. She was also interested in working for Judge Wallace because of his involvement with international judicial administration. Elizabeth is looking forward to “working with an outstanding jurist.” Through her clerkship experiences, she hopes to gain a better understanding of the judicial process, serve others, and better understand the law.

Upon completion of her clerkship, Elizabeth would like to pursue a career in public service and eventually teach law.

## TANYA CLUFF

Tanya Cluff, a 1996 Law School graduate, is currently working as a judicial law clerk for Judge Norman H. Jackson of the Utah Court of Appeals. After completing her current clerkship, she will continue to work in the court system as a law clerk for Judge Michael R. Murphy of the United States Court of Appeals, Tenth Circuit.

A Utah native, Tanya received her Bachelor of Arts in English from the University of Utah. She received her Juris Doctor this past April and will receive her master’s degree in English from BYU in 1997. While in law school, she showcased her writing abilities as an editor of the *BYU Law Review*.

When asked why she pursued a judicial clerkship, Tanya replied, “I was encouraged to apply for a judicial clerkship by

many people, including Professor Frederick M. Gedicks, other Law School faculty members, and Judge Jackson's former law clerks." Listening to these people describe their own clerkship experiences and the benefits of a clerkship interested her in this career option. She also noted that the support of her professors was essential to receiving her job offers. Besides providing career advice, the faculty wrote strong letters of recommendation on her behalf.

Tanya is particularly excited about the opportunity to perform two judicial clerkships at two different court levels. She explained, "A clerkship provides valuable insight into the inner workings of the court and the judicial decision-making process. My clerkships will give me an opportunity to further develop my analytical, research, and legal writing skills."

Upon completion of both clerkships, Tanya will pursue a

nontraditional career where she can continue to use her writing skills. Although she has not chosen a specific employer for whom to work, she is confident that her judicial clerkship experiences will provide her with the knowledge and skills to pursue many different career paths.

#### TOM ISAACSON

Tom Isaacson, a December 1996 graduate, will begin working for Judge J. Thomas Greene of the United States District Court, District of Utah, in January 1997. During his first year of law school, Tom decided to pursue a judicial externship. He received not only one externship offer but two, one of which was with Judge Greene, who he enjoyed working with so much that he later applied for a judicial clerkship.

Tom described his externship as "a very rewarding work experience." He is looking forward to meeting the challenges of a judicial clerkship—researching complex legal issues and assisting Judge Greene to write his opinions.

Since Tom has an electrical engineering degree from the University of Utah and has been very active in the Law School's moot court program,<sup>2</sup> his career goal is to work as a patent attorney and a patent litigator. He feels that this opportunity to observe successful and unsuccessful courtroom techniques and to review excellent and fair pleadings will help him become a better lawyer.

#### JAY JORGENSEN

After spending approximately 20 years living and working as a cattle hand in rural Utah, Jay Jorgensen will begin his legal career in New

Jersey. An April 1997 graduate, he will work next fall for Judge Samuel A. Alito, Jr., of the United States Court of Appeals, Third Circuit.

During law school, Jay has participated in various activities, including the *BYU Law Review*, first- and second-year trial advocacy competitions, and the Federalist Society for Law & Public Studies.

This past summer, Jay worked in the Washington, D.C., office of Kirkland & Ellis, where he had the opportunity to become acquainted with former Solicitor General Kenneth W. Starr. General Starr would occasionally spend time with Kirkland & Ellis' law clerks

discussing his litigation background. This experience confirmed Jay's desire to seek a litigation and appellate practice after his clerkship. He said that he pursued his judicial clerkship because it "seemed like a natural way to continue building on the litigation and appellate skills taught in law school."

After reading several Third Circuit opinions, Jay became particularly interested in working for Judge Alito. "I was impressed by several opinions [Judge Alito] authored, and several professors and practitioners recommended I apply to him," he said. Jay credits his success in obtaining his judicial clerkship to the Law School's faculty and to many members of the J. Reuben Clark Law Society who encouraged him to apply for a judicial clerkship, shared information about particular judges, advised him about application procedures, and recommended him to Judge Alito.

#### MICHAEL LEE

After moving across the country several times, Michael (Mike) Lee will remain in Utah at least one more year. A 1997 graduate, Mike will begin a judicial clerkship for Judge Dee V. Benson of the United States District Court, District of Utah, next fall.

Mike's interest in the law began early in life; he said that his family's dinner conversations often focused on constitutional law issues.

Additionally, he watched his father, Rex E. Lee, argue many cases before the Supreme Court. Moreover, as a political science major at BYU, Mike researched and debated constitutional law issues, particularly



NOTHING  
CAN PREPARE  
YOU AS WELL AS A  
CLERKSHIP



the last 60 years of Supreme Court jurisprudence regarding the Tenth Amendment's commerce clause. He remains interested in constitutional law and is a member of the Federalist Society for Law & Public Studies.<sup>3</sup>

After completing his clerkship, Mike would like to work in a firm as a litigator. He feels that nothing can prepare him as well for a litigation career as can a clerkship with Judge Benson. Mike was particularly interested in working for Judge Benson because of the opportunity he would have to hear the judge's opinion regarding different trial techniques and litigation strategies. He hopes to acquire some of Judge Benson's skills and knowledge.

#### JAMES MOSS

The latest 1997 graduate to receive a clerkship is James Moss. Jim targeted his clerkship search on the Los Angeles area and received an offer from Judge A. Andrew Hauk of the United States District Court, Central District of California.

After completing his first year of law school, Jim externed for Judge Davis at the Utah District Court, Fourth Judicial District. This positive experience was a factor in Jim's decision to apply for a judicial clerkship. He also received advice about judicial clerkships and was encouraged to apply for one by Law School faculty and J. Reuben Clark Law Society members.<sup>4</sup>

Since Jim grew up in Orem, Utah, and attended BYU for both his undergraduate and legal education,<sup>5</sup> I asked him why he chose to relocate to Los Angeles.<sup>6</sup> He explained

that many interesting cases and legal issues arise in that area, and he already has many friends currently living there. Since Jim wants to pursue a litigation career after his clerkship, he felt that a federal trial court clerkship in Los Angeles would be very exciting. Additionally, he explained that he was interested in working for Judge Hauk because he is known as a brilliant jurist with several years of experience on the federal bench.

#### JOI GARDNER PEARSON

Ever since she can remember, Joi Gardner Pearson wanted to be an attorney. Joi does not know where this desire came from since she was not acquainted with any lawyers. She says that she has always enjoyed defending causes, and law school appeared to be a perfect match.<sup>7</sup> After graduating in April, she will have the opportunity to watch others present oral argument and to improve her appellate techniques as she works for Judge Stephen H. Anderson of the United States Court of Appeals, Tenth Circuit.

Joi said that she has thoroughly enjoyed her law school experience and the opportunity to participate in various programs. A member of the managing board of the *BYU Law Review*,<sup>8</sup> she is a teaching assistant for legal writing and a tutor for criminal law. She said, "I was pleasantly surprised by the lack of competitiveness among my classmates and the opportunity I've had to make many friendships. This will be the first graduation that is really a bit sad."

She credits her success in obtaining a judicial clerkship

to the support of the Law School faculty.<sup>9</sup> In particular, Professors Larry EchoHawk and Cole Durham wrote exceptional letters of recommendation for her, and Professor Durham went out of his way to speak with Judge Anderson and convince him that Joi would be an asset to his chambers. Although Joi will miss the Law School, she is looking forward to this new experience and the beginning of her legal career.

Upon the completion of her clerkship, she would like to work in a law firm or pursue her interest in juvenile law and eventually teach. "Combining [her] love for the law and [her] love of teaching would be the ultimate" job for her, she said.

#### MATTHEW RICHARDS

Matthew Richards is a man who knows what he wants. Matt decided early in law school that he wanted to work as a judicial law clerk in Salt Lake City. After he graduates in April, he will work for Justice I. Daniel Stewart of the Utah Supreme Court.

Matt enjoys writing, which is one reason he pursued a judicial clerkship.<sup>10</sup> He uses his writing ability as a member of the managing board of the *BYU Law Review* and while working with Professor Richard Wilkins. "Professor Wilkins was very supportive of my decision to seek a judicial clerkship. [He] encouraged me to apply for a judicial clerkship, gave me advice about specific judges, and gave me an outstanding recommendation," Matt said. He also asserted that other faculty and members of the J. Reuben Clark Law Society were equally supportive.

Upon completion of his clerkship, Matt wants to work as a trial attorney for a law firm in Salt Lake City. This past summer he worked with Kirton & McConkie in its medical malpractice defense



department. He is very interested in tort law and would particularly enjoy defending medical malpractice clients again. In addition to refining his writing and advocacy skills, Matt feels that he "will gain a greater understanding of Utah law."

#### DAVID TODD

David Todd is beginning his legal career by combining his prior educational and work experiences with his interest in law.<sup>1</sup> A 1997 graduate, he will begin clerking for Judge Randall R. Rader of the United States Court of Appeals, Federal Circuit, next fall.

David's decision to attend law school was greatly influenced by his uncle, a patent attorney in Chicago. Although David may have known that he was going to attend law school, he was not always

certain whether he should pursue a judicial clerkship. Initially he wondered if a clerkship would only delay the beginning of his career. However, after much thought, he "realized that a judicial clerkship would not be a delay, but a 'jump-started beginning'" to what is sure to be an exciting legal career.

Fall 1995—the same time David began considering a judicial clerkship—he was required to write a case note as his law review assignment.<sup>2</sup> As he wrote, he became much more interested in patent law and became more aware of "the significance of the Federal Circuit in that area." He decided that a clerkship on the Federal Circuit would be excellent preparation for a career in patent law and would open the door to eventually teaching patent law.

David's law review case note also played a significant role during his interview with Judge Rader. As a writing sample, he excerpted a draft of his note, a discussion of a recent en banc Federal Circuit case. He and the judge discussed the case at length during the interview. Additionally, he attributes the Law School faculty with his success in obtaining his clerkship. Both Dean Reese Hansen and Associate Dean Scott Cameron championed him to Judge Rader, and David feels that their recommendations were a significant factor in the judge's decision.

#### Notes

1. I must immediately and emphatically state that I am not a "Trekie." Watching the *Star Trek* series was a

time for me to release and unwind and to bond with my predominantly male family. Although I continue to enjoy viewing *Star Trek*, I now only watch it occasionally. I have never attended a Star Trek convention, worn a Star Trek Halloween costume, or memorized individual episodes. Finally, I did not enjoy many of the *Star Trek* movies.

2. Tom won the Best Oralist Award during the first-year moot court competition and the Best Brief Award during the Law School's National Moot Court Team demonstration and was appointed to the Board of Advocates to coach traveling moot court teams.

3. In addition to participating in student organizations, Mike is also one of the first BYU law students to simultaneously participate in two co-curricular programs. He is a member of the Law School's National Moot Court Team, won the Best Oralist Award during the Law School's National Team demonstration, and was a semifinalist at a national First Amendment moot court competition. Beginning this fall he will join the *BYU Law Review* and will retain his membership on the Law School's National Moot Court Team.

4. In particular, Sterling Brennan, who previously clerked for Judge Hauk, advised Jim on application procedures and interviewing strategies. Brennan graduated from the Law School in 1986 and is active in the Orange County Chapter of the J. Reuben Clark Law Society.

5. As an undergraduate, Jim majored in political science and minored in philosophy. As a law student, he has contributed to the Law School by participating on the *BYU Law Review*.

6. I was raised in South Bay and Orange County and think that southern California is one of the best places to live. However, I realize my opinion is biased and not shared by everyone.

7. Joi explained that she began debating at a very early age. When she was five or six someone told her, "Anyone

who loves to argue and debate that much ought to be a lawyer!"

8. Joi will publish "Make It, Market It, and You May Have to Pay for It: An Evaluation of Gun Manufacturer Liability for Uniquely Dangerous Guns in Light of In re. 101 *California Street*" in a forthcoming edition of the *BYU Law Review*.

9. She also takes some credit due to her dart throwing abilities. During her visit to Judge Anderson's chambers, Joi was challenged by the judge to a game of darts. After a brief lesson from one of Judge Anderson's law clerks, Joi threw her first dart into the wood paneling of Judge Anderson's library. On her second attempt, Judge Anderson tutored her himself. She did much better the second time, making a bull's-eye. She guesses that second attempt helped her get the job.

10. As an undergraduate, Matt attended BYU, where he majored in English with an emphasis on composition.

11. Matt's comment, "Utah's Medical No-Fault Proposal: A Problem Fraught. Rejection of the Current Tort System," was published in the 1996 edition of the *BYU Law Review* at page 103. He has also coauthored two articles with Professor Richard Wilkins: "The Supreme Court Voting Behavior: 1994 Term" and "The Supreme Court Voting Behavior: 1995 Term," *U.C. Hastings Law Review*.

12. David received his mechanical engineering degree from BYU in 1994. He also worked as an engineering consultant, software development research assistant, and computer programmer before attending law school.

13. David is currently a member of the managing board of the *BYU Law Review*. His case note was "How Modern Treatment of 35 U.S.C. §§ 112(6) Has Caused Confusion: *Hilton Davis v. Warner-Jenkinson* and the Right to a Jury on the Issue of Patent Infringement Under the 'Equitable' Doctrine of Equivalents," *BYU Law Review* 141.